Ontario

Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

His Honour
Judge H. Ward Allen

1982

VOLUME 1

Printed by A. P. Gordon, Queen's Printer for Ontario.

ISBN for complete set of 4 volumes: 0-7743-7734-8
ISBN for Volume 1: 0-7743-7735-6

Copies are available from:
Ontario Government Bookstore
880 Bay Street
Toronto, Ontario, for personal shopping.

Out-of-town customers write to:
Publication Services Section
5th floor, 880 Bay Street
Toronto, Ontario M7A 1N8
Telephone 965-6015
Toll free long distance 1-800-268-7540,
in Northwestern Ontario 0-Zenith 67200.

Cheques payable to the Treasurer of Ontario.

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Judicial Inquiry Into the Care of
Kim Anne Popen by the Children's Aid
Society of the City of Sarnia and the
County of Lambton

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October, 1982.

The Honourable Mr. Frank Drea
Minister of Community and
Social Services
80 Grosvenor Street
6th Floor, Hepburn Block
Toronto, Ontario
M7A 1E9

Dear Mr. Minister:

I have now completed the duties assigned to me by your predecessor. I am pleased to enclose herewith my report upon my investigation of all matters relating to the care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton.

H. Ward Allen

H. Ward Allen

Terms of Reference

Copy of order by The Honourable Keith C. Norton, dated the 1st of March, 1978.

IN THE MATTER OF an investigation pursuant to section 3 of The Child Welfare Act, R.S.O. 1970, Chapter 64, as amended

AND IN THE MATTER OF the care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

AND IN THE MATTER OF the operation of the Children's Aid Society in the City of Sarnia and the County of Lambton under The Child Welfare Act

ORDER

IT IS HEREBY ORDERED that, pursuant to the provisions of section 3 of The Child Welfare Act and effective the 28th day of February, 1978, His Honour Judge H. Ward Allen a Judge for the County and District Courts of the Counties and Districts of Ontario be and he is hereby appointed,

1. To investigate all matters relating to the care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton, including,
    (a) the circumstances relating to the removal, care, return and supervision of Kim Anne Popen by the said Society, and
    (b) the actions of and performance of duties by the said Society and its officers, employees, agents and of any other person, or agency relating to such removal, care, return and supervision.

2. To review any matter arising out of this investigation of the care of Kim Anne Popen by the Society in relation to the ability of the Society to perform the powers and duties assigned to a Children's Aid Society under The Child Welfare Act.

3. To report his findings and to make such recommendations as he may deem fit to the Minister of Community and Social Services,

and the said Judge shall have authority to engage such counsel, research and other staff and technical advisors as he deems proper at rates of remuneration and reimbursement to be approved by Management Board of Cabinet where applicable.

DATED at Toronto, this 1st day of March, 1978.

(signed) Keith C. Norton,
Minister of Community
and Social Services.

Appreciation

This Report is the result of the efforts of several persons whose assistance and support I wish to acknowledge at this time.

Counsel to the Inquiry was Nicholson D. McRae, Q.C., as he then was, and Robert G. Murray, Q.C. They were responsible for the general conduct of the Inquiry. Their professional skills, their pleasant manner and their encouragement made my task so much less arduous than it might otherwise have been.

Without in any way derogating from the importance of counsel I felt that the linchpin, as it were, of the organization of the Inquiry was Detective Tom Hill of the Ontario Provincial Police. A thorough investigation was needed to ensure that I could fulfill my duties. Detective Inspector Hill is a skilled investigator who provided that investigation. In addition to his investigative talents he had a sensitive understanding of the nature of my task. Detective Inspector Hill was also the Administrator to the Inquiry, which in itself was a demanding job requiring skill and attention to detail. He provided both. He was an ideal complement to counsel professionally and personally.

Constable L. John (Jack) Clark of the Ontario Provincial Police assisted in various aspects of the investigation and in the preparation for the public hearings. Constable Clark did all that was asked of him and did it well.

I am grateful to H. H. Graham, former Commissioner of the Ontario Provincial Police, and his successor, James L. Erskine, who permitted me to have the benefit of the services of these two officers.

Gordon Chaput was a most able registrar during the phase of the Inquiry when public hearings were held.

I have spoken of counsel to the Inquiry. Other counsel represented other interests and their attendance and participation were helpful. Without intending to offend counsel whose duties required them to appear only briefly I want particularly to thank Mrs. Rosemary J. McCully, counsel to the Ministry of Community and Social Services and Mr. Thomas B. Granger, Q.C., counsel to the Children's Aid Society of the city of Sarnia and County of Lambton. They were present throughout and were co-operative with the staff of this Inquiry. Their participation lightened my task and that of other associated with me.

I want also to thank two witnesses who were called by the Counsel to the Inquiry. The Report indicates the extent of my reliance upon the expert testimony of Dr. Robert Bates and Dr. Francis Turner. I am indebted to them for the knowledge and experience which they made available to the Inquiry. Dr. Turner was of assistance in relation to social work generally, its practices and procedures. Dr. Bates, a skilled physician dedicated to the protection and care of children, was clearly an expert in relation to the role of medical personnel generally in relation to the detection and treatment of child abuse.

I thank also those from the community, such as Mr. Robert Sharen and Mr. Raymond Wryzykowski, who attended of their own free will to testify because of their interest in the welfare of the community and its children and not because of any personal involvement in the tragic incidents of Kim's life.

During the earlier stages of the Inquiry an office was maintained in Sarnia. Mrs. Clare Ross was responsible for the operation of that office.

Later in Toronto I spent many months in offices maintained by the Ministry of the Attorney General of Ontario for use by those engaged upon tasks such as mine. I was afforded every courtesy and assistance by the personnel of that office. Miss Doris Wagg relieved Detective Inspector Hill of his duties as Administrator and accepted responsibility for proof-reading this Report. Mrs. Carroll Brooks was responsible for reading my handwritten notes, composed of a difficult collection of scribbles, lines, balloons, arrows and other symbols or directions. She did it well and maintained a good disposition throughout. Mrs. Connie Hurley happily performed any secretarial or clerical duty requested of her.

I want also to express appreciation to the Municipal Council of the County of Lambton and the Administrator of the Court House and County Building complex in Sarnia. They provided excellent accommodations for the conduct of the many days of public hearings and assured the comfort of the public and of those directly involved upon the Inquiry.

I thank all of those whom I have mentioned and others who from time to time in various ways made a difficult duty a little easier.

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Chapter I

General Plan of Report

The initial requirements of the Ministerial Order can best be fulfilled by a review of the entire life of Kim Anne Marie Popen as it was revealed in the testimony and evidence presented to the Inquiry. For the sake of brevity I shall usually refer to the child simply as "Kim."

That will involve peripherally and briefly an examination of her antecedents and their lives up to the time of Kim's birth. As will be indicated that examination was not complete nor was it entirely satisfactory primarily because of what I perceived to be the unreliability of an important witness, Jennifer Angela Popen, mother of Kim Anne Marie Popen. However, I do believe it was sufficient for the purposes of this Report.

That review will involve an examination in some detail of various events in the life of Kim, and the involvement of various persons, institutions, authorities and organizations in those events.

The remaining requirement of the Ministerial Order will be fulfilled by a review of certain recommendations made by various witnesses who appeared before the Inquiry and by a tabulation of recommendations which would appear to flow from all of the evidence presented.

In the interest of brevity of the Report, all persons, authorities, organizations, institutions, documents, reports or the like shall be identified in accordance with the table of identification appended to the Report.

Similarly, the qualifications and experience of various witnesses, are set forth briefly in the list of all witnesses, arranged alphabetically and appended to the Report.

Schedule 2-B to the Report contains a number of extracts from The Child Welfare Act, R.S.O. 1970, Chapter 64, as it was on August 1, 1975 and as it remained until March 31, 1978, and the Regulations made thereunder.

Chapter II

Foreword

Mrs. Margaret Farina, whose participation in a review of Kim's case is described in Chapter XXVIII of the Report, is a compassionate and gentle lady. She testified as to remarks made by The Honourable Keith C. Norton, then Minister of Community and Social Services, in an opening statement to a meeting attended by representatives of children's aid societies on September 8, 1978. She said that copies of the Garber Report submitted to the Minister on June 19, 1978, were distributed and discussed at that meeting. She said that the Minister had suggested that the Report of this Inquiry should be mandatory reading for all people involved in child abuse.

Mrs. Farina said that she agreed with that statement

> "because it seemed in this particular case almost every mistake you could make was made with a few exceptions and it seemed to both the Minister and [herself] that this would be a very dramatic way of learning."

Extravagant as it may appear, that comment was, unfortunately, a remarkably accurate assessment of the evidence adduced upon the Inquiry.

Anyone who attended the various sessions of this Inquiry or who read the transcripts of the evidence cannot help but be struck by a feeling of sorrow and anger or frustration.

The evidence related to the short life and the too early death of a child, Kim. During her lifetime she was the victim of abuse and neglect. She was physically abused. She did not receive the protection to which she was entitled.

Courts of Ontario have already made some determinations in connection with that abuse and neglect.

Both parents of the child were charged with a breach of The Child Welfare Act. The information, laid by a member of the Sarnia Police Force and ultimately presented to the Provincial Court (Family Division) of the County of Lambton, set forth the allegation that:

> "Mr. Annals Ambrose Popen and Mrs. Jennifer Angelle (sic) Popen, 287 Devine St., Sarnia, between January 11/75 and August 31/75 at the City of Sarnia in the said County, having the custody of a child, Kim Anne Marie Popen, unlawfully did fail to protect the child, contrary to Chapter 64, Sec. 40(1) of the Child Welfare Act, Revised Statutes of Ontario."

At trial, the father, Annals Popen, entered a plea of guilty and the charge against the mother, Jennifer Popen, was withdrawn. Upon the evidence adduced upon the Inquiry it would seem that Jennifer Popen too might properly have been guilty of that offence as charged.

As a result of the events which led directly to that charge against the parents and as a result of the finding of guilt and upon the application of the Society, the Provincial Judge sitting in the Provincial Court (Family Division) of the County of Lambton, found Kim to be a child in need of protection and made the following order:

> "I order
> (a) that the child be made a ward of and committed to the care and custody of Children's Aid Society, City of Sarnia, County of Lambton for a period of six months commencing 25th February 1976."

While still a ward of the Society, Kim received injuries which caused her death.

Both of her parents were charged with manslaughter. During their trial the mother, Jennifer Popen, changed her plea to one of guilty. The jury found the father, Annals Popen, to be guilty. Upon an appeal heard in June, 1981, that conviction was set aside and a new trial for Annals Popen was ordered upon that new trial held in December, 1981 he was found not guilty.

In testimony before the Inquiry, Jennifer Popen admitted that she had caused some of the injuries described in the post-mortem report of the pathologist, Dr. Girdhari L. Patodia. She denied any knowledge of other injuries described by Dr. Patodia.

In addition to being the victim of abuse and neglect by her parents or one of them, Kim was the victim of neglect by others who, for a variety of reasons, failed to provide to her the protection to which she was entitled.

Upon the evidence and submissions to the Inquiry it is my view that responsibility for that neglect lies primarily upon the Society as represented by certain of its officers and employees. They failed to provide services which would satisfy reasonable standards of professional competence required of persons in their positions.

During the Inquiry, views were expressed to the effect that the whole community, the City of Sarnia, the County of Lambton, the Province of Ontario and something vaguely called "the system", had failed the child. It is clear that others do bear some responsibility along with the Society.

Some of those others bear specific responsibility by reason of their positions as professional persons or as occupants of various offices. Others might be described as ordinary citizens without training or skills or experience to enable them to recognize indicia of child abuse and neglect.

It is apparent that while many contributed to the neglect of the child, Kim, the effect of the contribution of each of them varied from that of the contribution of each of the others. Some were errors or omissions, perhaps of a highly technical nature, which had little, if any, effect upon the result of the sum of the many contributions. Others were errors or omissions which had a great bearing upon the ultimate result.

Various departments, agencies and personnel of the Province of Ontario failed the child. Particular responsibility falls upon the Ministry of Community and Social Services and that is dealt with rather extensively in the Report.

The advice given by the Crown Attorney to members of the Sarnia Police Force as to the charges to be laid following Kim's admission to hospital on August 31, 1975, was essentially correct. Unfortunately when the matter finally came to trial on February 23, 1976, the rationale of that advice was forgotten, overlooked or ignored by the Crown Attorney, the Assistant Crown Attorney and members of the Sarnia Police Force. There were various explanations given for that error or oversight.

The matter was dealt with in haste on February 23, 1976 by the Assistant Crown Attorney who had not been fully and properly instructed as to the intricacies of the matter. Not having fully acquainted himself with the relevant provisions of The Child Welfare Act and the elements of the offence charged, the Assistant Crown Attorney misconstrued the effect that a finding of guilt pursuant to section 40 of The Child Welfare Act against one parent would have upon the finding that might be made against the other parent, the essence of the offence charged being failure to protect the child.

Even prior to the trial, the Crown Attorney's office did not accord to the case the attention and preparation which it merited because of its very serious nature, implications and intricacies.

The matter was originally placed for trial in a court which lacked jurisdiction to try it. Delay resulted.

On another occasion, the Crown Attorney's office and the Sarnia Police Force failed to secure the attendance of a medical doctor whose evidence was essential to the prosecution. Delay resulted.

In preparation for the trial, the Crown Attorney did not request or receive from the Sarnia Police Force all of the information which should have been available to the office of the Crown Attorney to enable presentation of all appropriate evidence at the trial.

Thus, the Office of the Crown Attorney failed the child.

While the Probation Services of the Ministry of Correctional Services properly fulfilled the duties imposed upon them by the various requests and orders of the Provincial Court (Family Division) of the County of Lambton, with reference to the probation of Kim's father, Annals Popen, they failed to take full advantage of the opportunities they had to make observations within the family's home or to recognize or act upon what they did observe and particularly they did not apprise the Society of some of the developing situation which was or should have been causing them concern. Thus, they failed the child.

The Lambton Health Unit, as represented by its employees, failed to establish a proper and continuing liaison with the Society from June 1975 after learning of the allegations of abuse. Thus they failed the child.

Mr. Abdul Khattab, a social worker in the employ of St. Joseph's Hospital in Sarnia, had an inherent faith in the goodness of parents generally towards their children. He expressed that faith in respect of Kim's mother, Jennifer Popen. He appeared to lack a clear understanding of his role and his responsibility and duty as a social worker, even when specifically asked by Dr. Kunwar Singh or by a nurse on his behalf to do certain things. Thus he failed the child.

Some, such as hospital employees, doctors and nurses, relied upon others, including their professional colleagues, to fulfill the duty to report information pursuant to the provisions of section 41 of The Child Welfare Act. Thus they failed the child.

Some, such as the Sarnia Police Force, did not exercise the full power and authority given to them under The Child Welfare Act to investigate complaints and to apprehend children. In Kim's case they left it to the Society to do. Thus they failed the child.

The apparent harshness of that last statement must be mitigated by recognition of matters dealt with more extensively elsewhere in this Report. At least one police officer very strongly stated to Mrs. Harvey his concern for Kim's welfare. Mrs. Harvey chose to make a decision which was directly contrary to that police officer's express recommendation. There were practical considerations which in my view virtually compelled the police officers to rely upon the Children's Aid Society who at all times were the public or community agency primarily responsible for the care and protection of the child.

Some, such as relatives, friends and neighbours of the family, were interested generally in Kim and her family. They were unable or unwilling to recognize or fully appreciate what was happening in that family and to Kim. They were unable or unwilling to believe that either parent could or would abuse or neglect Kim. Thus they failed the child.

That others failed Kim in any way provides no cause or excuse for the failure of the Society to fulfill its entire obligation towards Kim, whether pursuant to The Child Welfare Act or the order of the Provincial Court (Family Division) of the County of Lambton, from June 17, 1975 until her death on August 11, 1976. It would appear that if the Society, collectively, and especially those officers and employees whose roles and apparent failures are examined and discussed in this Report, had fulfilled its and their obligation to Kim she would probably still be alive.

Similarly the failure of the Society and others does not relieve the Ministry of Community and Social Services, particularly the Child Welfare Branch as it was constituted during the months of Kim's life, of criticism for its failure to fulfill its statutory duties, which failure contributed to some of the failure by the Society towards the child. That Ministry does not appear to have been a particularly effective instrument to fulfill its duties and obligations pursuant to the provisions of The Child Welfare Act and thus its duties and obligations to Kim.

As one listened to the testimony of employees of that Ministry, one could not help but form the impression that, for whatever the reason, during the period of time material to the life and death of Kim, the Ministry muddled along. It appeared to have been constantly reviewing, discussing, re-organizing, appointing task forces or the like and engaging consultants. Then the Ministry did not act effectively upon whatever came from such reviews, discussions, task forces, and consultants. Instead the Ministry would begin another round of review and discussion and re-organization.

In his submission to the Inquiry, counsel for the Society suggested that the position of that Ministry was summed up in a portion of a letter published in December, 1978 by the President of the Ontario Association of Children's Aid Societies.

The portion as read by Mr. Granger bore the sub-title "Does this sound familiar?" and continued as follows:

> "A faithful reader who shall remain nameless has sent us this quotation from Petronius which seems to fit the current Ministry's situation.
> 'We trained hard, but every time we were beginning to form up into teams we would be re-organized and I was to learn later in life that we tend to meet any new situation by re-organizing and a wonderful method it can be for creating the illusion of progress while producing inefficiency and demoralization.'"

Another version of that quotation which I have seen places the word "confusion" before the words "inefficiency and demoralization." I think "confusion" too is an appropriate word to apply to that Ministry's position at least during Kim's lifetime.

The impression given to me by employees of the Ministry who testified was that at all material times, the Ministry was searching for an ideal organization. However commendable that search may have been, the Ministry failed properly and fully to perform its duties and obligations. The Ministry failed to use or continue to use what it had, however imperfect that may have been. In its search, the Ministry chose to discontinue some of its functions in the child welfare field or allowed some of them to lapse or disappear by attrition. As a result, a void existed for a considerable period of time, and the Society operated without effective supervision and inspection by the Ministry during all or most of Kim's life.

The Ministry was caught in the financial restraints imposed by the Government of Ontario from 1975 forward. The Ministry lacked the personnel or other resources to perform certain things it had undertaken or which it was required to do to fulfill its statutory duties. That inability or failure by the Ministry clearly demonstrates the futility of The Honourable James Taylor, Q.C., the then Minister of Community and Social Services, directing the Society in effect to continue to do as good a job as it had been doing, but do it with proportionately less money. The Ministry itself appeared unable to achieve that goal.

On the evidence it would seem that funding of the Society's operations by the Ministry or otherwise was not a directly contributing factor to the failure of the Society to fulfill its duties and obligations to Kim. However, there appeared to be in the Society an all-pervasive concern with the financial aspects of its operation. In the years which are material to the Inquiry the budgets as submitted by the Society to the Ministry of Community and Social Services were not initially approved by the Minister. It would seem that those concerns with financial matters and difficulties with budgets in part created a state of poor morale among the Society's staff. Mr. William John Lovatt, Local Director of the Society, devoted a large part of his efforts in relation to such matters. It would appear that as a result of that he was not as fully involved as he might otherwise have been in that part of the Society's operations related to the delivery of services to the community including services to protect Kim.

The entire endeavour of this Inquiry cannot help Kim. But perhaps her terrible suffering and death, the events which led to the Inquiry and the conduct of the Inquiry will cause us to do some of what we as a human and humane society might do to reduce the risk of any other child suffering and dying as she did.

On the evidence it would appear that the Ministry of Community and Social Services has now effected certain changes and has allocated substantial sums of money, hopefully to enable it more fully and effectively to perform its duties and obligations to all children in Ontario. One can only hope that the changes are real and that they do not fall into the same category as the earlier reorganizations and reviews in respect of which the quotation from Petronius seems most apt.

It is perhaps naive to believe that we can entirely prevent the abuse or neglect of children. But that should be the ultimate goal and nothing should stop us from trying to reach it.

It is likewise naive to believe that unlimited resources of funds and personnel are available to enable us to reach that goal however laudable it may be. We can only hope that those responsible for the allocation of our total resources to meet the multitude of claims upon them will assign a very high priority to the protection of our children who, in the words of Dr. Robert Bates in his testimony to the Inquiry, are "our most precious commodity."

Chapter III

Kim's Antecedents

Kim was a child of the marriage of Annals Popen and Jennifer Popen. She was born at Sarnia, Ontario, on January 11, 1975.

The only evidence presented to the Inquiry as to the family background of Jennifer Popen and Annals Popen came from them either directly in their testimony or indirectly in the testimony of others as to what they had been told by one or the other of Annals Popen and Jennifer Popen. Like others before me to whom they had given information as to their backgrounds, I found the evidence to be of little value, particularly as it related to Jennifer Popen's family and life before her marriage to Annals Popen.

I determined, however, that the purposes of the Inquiry did not require me to direct further investigations to resolve the inconsistencies and contradictions revealed in that evidence.

As to Jennifer Popen, I am prepared to accept that she was born in Jamaica. In one area of her testimony she said her date of birth was September 7, 1959, and that she had been thirteen years old at the date of her marriage. Later she said she was not sure of the year of her birth although she said her birth certificate shows it to be 1959.

Medical reports and records produced upon the Inquiry, all presumably based on information given by her to the various persons preparing those reports and records ascribed a variety of ages to her.

Dr. Samir F. Jumean, the family doctor, testified that on records of her admission to hospital her date of birth was shown as September 7, 1957.

Dr. Singh, who examined Kim on various occasions, wrote a report dated August 31, 1975, in which he stated Jennifer Popen's age then to be 19.

Dr. James J. Curtin, a psychiatrist who examined or interviewed both Annals Popen and Jennifer Popen at various times, wrote a report dated March 19, 1976, in which he stated Jennifer Popen's age at that time to be 18.

The pre-sentence report dated March 29, 1976, to which the last mentioned report is attached, prepared by George Brouwer, a Probation Officer, in connection with the sentencing of Annals Popen following his having been found guilty in the Provincial Court (Family Division) of the County of Lambton, upon the charge under The Child Welfare Act, states that Jennifer Popen was fifteen when she met Annals Popen in 1972 and when she married him in 1973.

Dr. Curtin in a subsequent report dated September 26, 1977 stated Jennifer Popen's age then to be eighteen upon the basis of her birth certificate which he said showed her date of birth to be September 7, 1959.

A pre-sentence report dated December 19, 1977 prepared by Mr. Brouwer, in connection with the sentencing of Jennifer Popen following her having been found guilty of manslaughter in connection with Kim's death, states that

> "Jennifer Angela Popen, nee Mair, was born in Kingston, Jamaica on September 7, 1959, according to her birth certificate; the year of birth appears to have been altered on this certificate to read 1957. Her year of birth on her Jamaican passport is given as 1957."

That same pre-sentence report also contains the following statement:

> "For the preparation of this report we have experienced difficulties in gathering factual information on the offender's background. There have been doubtful statements, changed statements by the

> offender, and other conflicting stories which could not always be verified."

Further as to Jennifer Popen's age, Annals Popen testified that he understood her to have been 16 years of age at the time of their marriage. He said he was told this by a woman whom he described as Jennifer Popen's 'mother', but who probably was the aunt or foster mother with whose family she had apparently lived from a very early age.

Some of Jennifer Popen's evidence tended to confirm that that was Annals Popen's understanding and the basis for that understanding even though she suggested that the aunt or foster mother had not known Jennifer Popen's age.

A report dated December 12, 1977, prepared by Dr. Selwyn M. Smith, a psychiatrist, who had examined Jennifer Popen, which report is attached to the pre-sentence report dated December 19, 1977, states her date of birth to have been September 7, 1959. That report then in reference to the marriage states:

> "Her aunt also presented a falsified birth certificate which stated that she was 16 years of age."

I have made this review of this area of the evidence not because I felt it necessary to determine Jennifer Popen's correct age, but simply to demonstrate the difficulty one has in trying to ascribe credibility to her evidence even as it related to her age.

I am prepared to accept as correct that she was, by the standards of Canadian society at least, quite young when she married Annals Popen and when Kim was born.

The same difficulty applies to any attempt to ascertain how Jennifer Popen lived in Jamaica prior to her marriage to Annals Popen. The only evidence really came from her directly or from others to whom she had made various statements. That evidence is fraught with contradictions, inconsistencies and uncertainties.

Jennifer Popen's evidence was that, when she was six years old, she lost her parents. I believe she used the word "lost" in the sense that they deserted or abandoned her or placed her with a foster family. She said she lived with that foster family which she said included a woman whom she described as being her aunt.

At one point Jennifer Popen said she thought this family was in some way related to Annals Popen. At another point she said she really did not think there was any such relationship, but if there were it would be a distant one.

Jennifer Popen testified that the foster family, including some of her siblings, was made up of about thirteen persons. She said that from about the age of eight she was abused physically and sexually by her foster parents and others in the foster family.

Jennifer Popen testified that she had given birth to a child prior to her marriage to Annals Popen. Her evidence places her age at the time of such birth as, variously, "over eleven" and "going on thirteen". Her evidence was that she had given that child to her grandmother and that the child was still living in Jamaica. In her evidence on September 27, 1978 when asked how old that child was then, her reply was "I'd say seven". That would place the date of birth of that child in late 1970 or in 1971. I am not prepared to rely upon Jennifer Popen's vague evidence.

It must also be noted that there was other evidence, as that of Mrs. Shirley Lo and Mr. Harold Carter, of the Society, that Jennifer Popen had said that the child born to her in Jamaica had died. In her evidence upon the Inquiry, Jennifer Popen acknowledged that she may have told Mr. Carter that her child in Jamaica had died and, that if she did, she had lied about it.

Again I have cursorily reviewed these segments of the evidence not so much because of any need to establish definitely the circumstances of Jennifer Popen's life prior to her marriage to Annals Popen, but because it appears from the evidence of others upon the Inquiry that the life experience of a person has considerable influence upon that person's behaviour as a parent, perhaps especially insofar as abusive acts towards his or her children are concerned.

In her testimony, Jennifer Popen spoke of herself as having an uncontrollable temper. At one point in her testimony, she said that she had not confided in anyone nor had she received any medical or psychiatric treatment in respect of her temper prior to Kim's death. She said she had seen doctors in Jamaica, but she could not remember the reason for such visits. She said she was not sure if they related to her uncontrollable temper. She said she had not consulted anyone in Canada about her temper until after Kim's death.

In her testimony she said that after Kim had been returned to her home, and I presume she meant the return on May 27, 1976, she had seen Dr. Stephen Gamula about her temper and the infliction of injury to Kim and had received some medication to help her control her temper. She said she took the pills as prescribed.

However, Dr. Curtin in the report attached to the pre-sentence report prepared by Mr. Brouwer in March 1976, wrote of having interviewed Jennifer Popen on October 22, 1975 following her referral to him by Dr. Gamula. That referral may very well have been in connection with Jennifer Popen's temper and its manifestation.

In her testimony, Jennifer Popen said that it was possible that she had injured Kim during a temper tantrum when she did not know what she was doing, but she cast doubt upon the likelihood of that possibility by saying that she always knew when she hit or slapped Kim.

The pre-sentence report prepared for the assistance of the learned County Court Judge with reference to the sentencing of Jennifer Popen following her having been found guilty of manslaughter in connection with Kim's death contained a reference to Jennifer Popen having spoken of the death by suicide of one of her sisters and two of her step-sisters. When asked about that during the Inquiry her response was

> "Well, that's news, I am not sure of that, if that's the way it was done. It could, you know, could have been accident as far as I am concerned."

but she did go on to say that she had told the Probation Officer who prepared the pre-sentence report that two of the girls or women had taken their own lives, but she was not sure whether the third had died by accident or suicide. She claimed not to know the ages of those girls or women or if they were living at home at the times of their deaths. Her evidence as to the ages of the sisters in relation to her age and the dates of their deaths in relation to the date of her marriage to Annals Popen and the date of her immigration to Canada is also vague and uncertain.

Again I do not feel obliged to make any finding as to the truth or otherwise of any of that evidence. I think it does become of interest in considering the actions of others in relation to the subject matter of the Inquiry and their failure to seek to ascertain some of the truth as to Jennifer Popen's background in their efforts to learn the source or cause of Kim's serious injuries and to whom their particular attention should be directed.

Jennifer Popen testified that she did not have a great deal of difficulty in school and had advanced to Grade Nine and was going to Grade Ten at the same time.

The life of Annals Popen prior to his marriage to Jennifer Popen appears to have been quite uneventful. He was born in Jamaica on September 24, 1939 and received a Grade Eight education there. He came to Canada in 1957. He has been employed in the laundry at St. Joseph's Hospital in Sarnia and in the construction industry.

In 1972, Annals Popen returned to Jamaica. On that visit he met Jennifer Popen. Jennifer Popen's evidence was that she had known him for about six months prior to their marriage. She said she knew him quite well and liked him, but that marriage to him was not really her choice and that she had married him because her "aunt" told her to.

Annals and Jennifer Popen were married in Jamaica in January, 1973. Jennifer Popen's evidence was that the marriage was solemnized in a church on January 13, 1973.

Jennifer Popen testified that after their marriage she came to Canada as a visitor and lived with Annals Popen in Sarnia for about six months or more. She said he was kind to her and it would seem that nothing of any significance occurred during that six month visit. She did testify that at that time, she did not know if she wanted to remain in Canada or not. She said she then returned to live in Jamaica for two or three months after which she came to Canada in 1974 to live with Annals Popen. I gather Annals Popen had remained in Canada during Jennifer Popen's return to Jamaica.

Another example of the difficulty one has in considering the evidence of Jennifer Popen arises from her answer as to whether or not Annals Popen was working during the period of her visit of six months or so to live with him in Canada. Her answer was "I think he was -- I don't remember."

There does not appear to have been any particularly striking feature in the life of Jennifer Popen and Annals Popen together in Sarnia prior to Kim's birth. Jennifer Popen did testify that Annals Popen had a problem with alcohol, but I gained the impression that that, if it was in fact a problem, did not arise until after Kim's birth.

Neither Jennifer Popen nor Annals Popen testified as to the effect, if any, upon their life together of the situation recorded by Mr. Carter as his personal observation that Annals Popen had "numerous extended families residing constantly and always within his own location" whereas Jennifer Popen, "on the other hand, present[ed] a rather isolated person," who had stated she was not liked by her husband's family or the extended families by the name of Kameka, who, according to Mr. Carter were numerous in the area of Sarnia.

From my observation and assessment of Jennifer Popen and Annals Popen as they testified upon the Inquiry and upon the impression I gained of them from the testimony of other witnesses as to their observations and assessments of Jennifer Popen and Annals Popen as individuals and in their marriage and as parents, with particular reference to the matters before this Inquiry, I concluded that Jennifer Popen was the dominant partner in the marriage and in the care of Kim.

I think Annals Popen was a passive, docile, almost plodding partner, yet he must have known, at least to some extent, that his wife was abusing Kim. Whether from fear of losing his wife or alienating her, he did nothing to protect Kim. In fact, he appears to have done everything in his power to assist Jennifer Popen in covering up her abusive treatment of the baby.

Dr. Bates testified that in a family situation where one parent has "the potential to abuse" and the other has a passive personality, abuse may well occur. The Popen family fitted this pattern completely. Annals Popen's conduct was a tragic instance of passivity and wilful blindness.

Jennifer Popen, despite her youth and despite any psychiatric, psychological, mental or emotional disorder from which she may have suffered at any time, including the times of her attendances to testify upon the Inquiry, appeared to me to be a person quite capable of creating, relating and maintaining elaborate stories and deceptions. She had a further facility of amending any story if she felt she had been or was about to be caught up in a lie. I feel that she demonstrated or admitted that capability and that facility as she testified. At other times it seemed that when she knew she was found out she brazenly admitted that she had lied.

Jennifer Popen seemed to have a further facility almost to toy or play with or tease various counsel and myself upon the Inquiry. It seemed that on several occasions she would ask for what I felt was unnecessary clarification of some detail or part of a question that was put to her, seemingly indicating that she was prepared to answer, but then when the question was rephrased or clarified either she announced an inability to remember the subject matter of the question or she adopted some similar device to avoid answering the question. The professed inability to remember was sometimes employed by her without any adornment. In the end her cloak of professed failure to remember became transparent.

On other occasions Jennifer Popen's answers were vague, confusing or unintelligible. Sometimes two or more of those adjectives could be applied to one answer however short it may have been.

Jennifer Popen seemed to me to have an ability to be quite intuitive or perceptive as to how certain events would develop. For example, if she was honest in this area of her testimony, and I am not prepared to find that she was, she seems to have been uncannily accurate in her assessment of the time at which the Society would return Kim to her home.

Jennifer Popen seemed also to have an ability to deceive, exploit or manipulate others to her own advantage. These were persons who appeared to me by their very nature to be honest, trusting and decent persons who wanted to be helpful to Kim and her parents and who wanted to believe that others, particularly Jennifer Popen, were honest, good and decent people guilty of no crime or offence. Mrs. Catherine Rose Maughan, a volunteer worker with the Probation Services of The Ministry of Correctional Services, was one such person.

All in all I found Jennifer Popen to be less than honest. She was a devious and unreliable witness.

There was some suggestion in the evidence upon the Inquiry to suggest that Annals Popen had a problem with alcohol. I am not at all satisfied that that is so, nor am I satisfied that if he did have any such problem it had any bearing upon Kim's injuries and death.

Jennifer Popen testified that Annals Popen was drinking, presumably to excess, from the date of Kim's birth in January, 1975 until August, 1975 when the Society obtained custody of Kim following her admission to hospital with severe injuries. She said he drank mostly on weekends and did not drink much during the week because he had to go to work. She said that on occasion he became so intoxicated that he could not on the next day remember what had occurred during the period of his drinking.

Annals Popen, in his evidence, denied that he was a heavy drinker, but he did seem to acknowledge that he did drink on weekends and sometimes to the extent that he could not remember what he had done while drinking. That evidence is consistent with what was presented to the Provincial Court (Family Division) of the County of Lambton, in early 1976 during the trial of the charge under The Child Welfare Act. But, as I have indicated earlier, I would be inclined to be doubtful of it because of my assessment of Annals Popen as a man easily persuaded or anxious to accept such suggestions from his wife and because of Jennifer Popen's evidence as to the episode involving the thrown slipper which seemed to loom large in Annals Popen's admission of guilt upon that charge.

There was no evidence that even that suggested problem with alcohol continued beyond that period of Kim's being in hospital in September, 1975. Apparently Annals Popen decided then to stop drinking and, perhaps with the assistance and encouragement of friends such as Douglas Vanderberghe, was able to persist in that decision.

In her evidence Jennifer Popen acknowledged that she had told "stories" to the doctors who were attending Kim, that is "stories" as to how Kim had suffered the injuries. Similarly she acknowledged that she was less than honest with Annals Popen when she described to him the way in which he had, according to her "story" to him, injured Kim while he was under the influence of alcohol and had thrown a slipper which struck Kim.

Jennifer Popen also acknowledged that, in discussions with the Society's personnel and others, she had denied that she inflicted any injury upon Kim, injuries which in her evidence upon the Inquiry she acknowledged were inflicted by her.

Those then in very general terms were the immediate antecedents of Kim as I found them to be upon the Inquiry.

Chapter IV

The Life of Kim

This Chapter of the Report describes in very general terms the life of Kim and a number of significant events therein. The following Chapters shall deal in some detail with various periods of time in Kim's life and the events in those periods and shortly thereafter.

Kim was born in Sarnia, Ontario, on January 11, 1975. Her parents were Annals Popen and Jennifer Popen.

On March 22, 1975, at the age of two months, Kim was admitted to St. Joseph's Hospital, Sarnia with a transverse fracture of the upper left humerus with displacement. She was also found to be suffering from an infection of the upper respiratory tract.

Dr. Malcolm D. Thorp was the physician who admitted Kim to hospital. Dr. Brian Edward McCrudden was the radiologist who took X-rays and prepared a report. Hospital records indicate that Drs. William A. Woods, S.S. Lota and S.F. Jumean had responsibility as attending physicians. Dr. Singh was the pediatrician who was consulted and who prepared a report indicating his suspicion that Kim was a victim of child abuse.

Thus as early as March 22, 1975, when Kim was two months old, a well qualified person with professional training and experience had expressed a suspicion of child abuse and from that day forward that recorded expression of suspicion was available to all who were responsible for the care and protection of Kim, especially the Society to whom a report of suspected abuse of Kim was made on June 17, 1975, in whose care and custody Kim was placed by her parents on August 31, 1975 and in whose care and custody she remained by virtue of an order of the

Provincial Court (Family Division) of the County of Lambton, until her death.

Dr. Singh directed that the social worker employed by the hospital investigate the matter. That social worker was Mr. Khattab.

On April 3, 1975, Kim was discharged from hospital. Dr. Jumean signed the discharge document as attending physician.

On April 28, 1975, at the age of three months, less than four weeks after her prior discharge from hospital, Kim was again admitted to St. Joseph's Hospital with a provisional diagnosis of dehydration and high temperature. Dr. Jumean was the attending physician. There was a primary diagnosis of bronchitis and a secondary diagnosis of diaper rash. The case history, signed by Dr. Jumean, says "The child has been admitted with upper respiratory infection for further investigation and treatment."

On May 2, 1975 Kim was again discharged from hospital. Dr. Jumean signed the discharge document.

At some time before August 31, 1975 when Kim was less than eight months old, perhaps in June or July or August, 1975, Kim and her mother were seen in a shopping mall in Sarnia by Mrs. Betty Louise Hewitt. Mrs. Hewitt is a registered nurse who was on duty, as Acting Head Nurse, in the children's ward of St. Joseph's Hospital while Kim was in the ward in March and April, 1975. She recognized the child and mother. She observed that Kim's face was bruised and her eyes blackened.

In June, 1975, Dr. Jumean, physician to the Popen family, telephoned the Sarnia Police Force to report his suspicion that Kim had been abused. As I will discuss in greater detail in later portions of the Report, I am satisfied that on June 6, 1975, Dr. Jumean had examined Kim at the request of a relative of the Popen family, who was concerned for her well-being and who feared she had been mistreated and so brought her to Dr. Jumean's office. I believe that it was Mrs. Fay Popen who brought Kim to Dr. Jumean. Dr. Jumean testified that he recorded the visit as follows:

> "Baby - multiple bruising of the arm, the face and the lower left region" and "possible battered syndrome."

Dr. Jumean testified that he telephoned the police that day. The evidence of Staff Sergeant James Allan, of the Sarnia Police Force, was that the telephone call was received by the police on June 16, 1975. In all the circumstances, I prefer the evidence of Staff Sergeant Allan to that of Dr. Jumean as to the date on which the call was made to the Sarnia Police Force.

On June 17, 1975, Police Constable Christopher Gander, of the Sarnia Police Force, attended at the Society's office. He spoke to Mrs. Audrey Dick, an intake worker, to inform the Society that the Sarnia Police Force had received a report of suspected abuse of Kim.

Mrs. Dick promptly arranged for Mrs. Sandra Saul, another intake worker, and Mrs. Winona Hoad, a volunteer worker with the Society, who was also a qualified nurse, to accompany Police Constable Gander to visit the Popen home to investigate the report.

On June 17, 1975, Mesdames Saul and Hoad and Police Constable Gander located Kim in the care of a relative, the same relative whose comments had led Dr. Jumean to telephone the police.

When Kim was examined on June 17, 1975, by the Society's workers, there was little, if any, appearance of any injury or abuse to her. However, the circumstances preceding and surrounding the examination and the immediately subsequent conduct of Kim's parents were such as to cause Mrs. Saul to report directly and immediately to her supervisor in the Society, Mrs. Mabel Harvey, Supervisor of the Family Services Department. Mrs. Harvey accepted Mrs. Saul's recommendation that the whole matter of Kim's care merited prompt and continuing attention by the Society. Mrs. Harvey assumed direct personal responsibility for the further processing of the matter within the Society and assignment of the responsibility to a long term worker.

It is clear that Mrs. Harvey did not cause a file to be opened in the Society with reference to

Kim, nor did she assign responsibility for the management of the case to any of the Society's workers at that time.

There is evidence to suggest that there were telephone conversations between members of the Sarnia Police Force and the Society's workers, with reference to Kim, between June 17 and August 25, 1975. That evidence is not of much assistance because it is vague as to the parties to and the content of those conversations.

While testifying upon the Inquiry, Dr. Jumean produced from his records a card upon which he recorded various attendances upon or in relation to Kim. The notes were virtually indecipherable, even by Dr. Jumean. It may have been lack of clarity of those notes which led Dr. Jumean to testify initially that he saw Kim on June 6, 1975 and that day telephoned the Sarnia Police Force. The notes make no mention of any telephone call and do seem to me to indicate the visit was on June 6, but they might indicate it was on June 16. As I state later in the Report I am satisfied that the visit was on June 6, 1975. The notes indicate another visit on June 19, 1975. Dr. Jumean said that visit was by Jennifer Popen. He said that visit resulted from the earlier visit when he saw Kim. He said he telephoned Jennifer Popen and asked her to come to his office. He said he wanted "to find out what's going on."

There is also some evidence to the effect that on August 29, 1975, Mrs. Harvey discovered that she had not had a file opened and had not assigned the case to any of the Society's workers. I do not recall any evidence to suggest any incident which would have brought the matter to Mrs. Harvey's attention or mind on August 29, 1975. August 29, 1975 was the Friday preceding the Labour Day weekend. It was the last normal working day for the Society's staff before the long weekend. If Mrs. Harvey did make that discovery on August 29, 1975, it was indeed an event of surprising coincidence.

The coincidence arises because on Sunday, August 31, 1975, Kim, when eight months old, was again admitted to St. Joseph's Hospital as a patient.

Upon that admission she was found to be suffering from bruises to various limbs and other parts of her body. An X-ray taken in connection with that admission revealed a recent fracture of the lower end of Kim's left humerus within the elbow joint in addition to the healing of an earlier mid-shaft fracture of the same bone. Another concurrent X-ray revealed healing fractures of two ribs. The medical evidence was that those fractures of the ribs had occurred three or four weeks prior to the taking of the X-rays on September 1, 1975.

In his report following his examination of Kim upon that admission to hospital Dr. Singh expressed and recorded a diagnosis of "Battered child syndrome."

Dr. Singh referred the matter to Mr. Khattab, the hospital social worker, for investigation.

The Society and the Sarnia Police Force were informed of Kim's admission to hospital. Mrs. Dick of the Society and police officers attended at the hospital on August 31, 1975.

On August 31, 1975, Kim's parents signed a form of agreement or consent prepared by Mrs. Dick placing Kim in the care and custody of the Society for one month.

At about the same time a file on Kim's case was opened in the Society. Responsibility for the handling of the case and file was assigned to Mr. Carter.

On September 5, 1975 Kim was discharged from hospital and into the care of the Society pursuant to the agreement or consent signed by her parents on August 31, 1975. The Society placed Kim with foster parents.

At about that time the Society prepared an application to the Provincial Court (Family Division) of the County of Lambton seeking an order declaring Kim to be a child in need of protection and granting wardship of Kim to the Society. That application was made pursuant to The Child Welfare Act.

On October 16, 1975, Constable Barry Wyville of the Sarnia Police Force laid an information against both Annals Popen and Jennifer Popen alleging that they did fail to protect Kim in contravention of The Child Welfare Act. That information was originally presented in the Provincial Court (Criminal Division) of the County of Lambton. It was later determined that that Court did not have jurisdiction in the matter and the information was then presented in the Provincial Court (Family Division) of the County of Lambton.

After some lengthy adjournments the application of the Society and the prosecution of Kim's parents under The Child Welfare Act were finalized in February and March, 1976.

In February, 1976, Police Constable Wyville and Police Constable Paul Charlton of the Sarnia Police Force visited the Society's offices to discuss the matter. There was discussion of the plea of guilty by Annals Popen in respect of the charge under section 40 of The Child Welfare Act and of the withdrawal of that charge against Jennifer Popen.

Mr. Carter of the Society testified that he was concerned as to the effect of that plea and withdrawal upon the application of the Society for wardship of Kim. The police officers were concerned about the suggestion that in all the circumstances Kim might be returned to her parents. As a result the two police officers, Mr. Carter and Mrs. Mary I. Kirby, another of the Society's workers, spoke with Mrs. Harvey and expressed great concern for Kim's safety if that were to occur.

Mrs. Harvey's response to that concern was that Kim was going home. Mrs. Harvey's response was made even after Police Constable Wyville expressed the opinion, eerily prophetic in the result, that if Kim were returned to her parents she would be in her grave in three months. Kim died on August 11, 1976 less than three months after her return home on May 27, 1976.

On February 23, 1976, Annals Popen, who had earlier pleaded not guilty, entered a plea of guilty to the charge against him under section 40 of the The Child Welfare Act. He was remanded to March 29, 1976 for sentence. A pre-sentence report was ordered. The similar charge against Jennifer Popen, who had pleaded not guilty, was withdrawn. Mr. Edward Hibberd, Assistant Crown Attorney for the County of Lambton, appeared on behalf of the Crown and Mr. William F. Higgins appeared on behalf of both Mr. and Mrs. Popen. Mrs. Harvey was present on behalf of the Society.

On February 25, 1976, the application brought by the Society under The Child Welfare Act was heard. An order was made finding Kim to be a child in need of protection. Wardship of Kim was granted to the Society for a period of six months. The application was heard by His Honour Judge Q. L. Nighswander who had heard the prosecution of the parents under section 40 of the The Child Welfare Act on February 23, 1976. Evidence presented upon that prosecution formed part of the evidence upon the Society's application.

The application was presented by Mrs. Harvey on behalf of the Society. The parents were represented by Mr. Higgins and Mr. Ian Harvey of his office. The material relied upon by Mrs. Harvey in her presentation had been collected and prepared by Mr. Carter to whom Kim's file, I find as a fact, had been assigned effectively in September, 1975. The files of the Society would seem to indicate an earlier assignment of the case to him -- perhaps as early as June 19, 1975.

On February 25, 1976, after the conclusion of the hearing of the Society's application for wardship Mrs. Harvey orally informed Mr. Carter that she was relieving him of responsibility for management of Kim's case and that she was assigning responsibility for such management to Mrs. Lo.

On March 29, 1976, following his conviction on February 23, 1976, Annals Popen was placed on probation for a period of one year on various terms. The pre-sentence report presented to the Court was accompanied by a report from Dr. Curtin, who had interviewed Annals Popen on three occasions. Because of my view of the relationship between Annals Popen and Jennifer Popen in their marriage it seems to me to have been a significant fact that Jennifer Popen was present with Annals Popen at all three of those interviews.

The pre-sentence report was prepared by Mr. George Brouwer, who was assigned to supervise Annals Popen's probation. In that supervision Mr. Brouwer was assisted by Mrs. Maughan.

Mr. Brouwer assigned duties, particularly the duty to visit the Popen home, to Mrs. Maughan. Thus Mrs. Maughan was in that home on various occasions between March 30, 1976 and Kim's death on August 11, 1976. She became aware of some dissatisfaction expressed by Jennifer Popen as to the manner in which Mrs. Lo, of the Society, was performing her duties or functions in relation to Kim and her parents.

About May 7, 1976 a meeting of some of the Society's personnel was convened to determine when the decision, already made and announced by Mrs. Harvey, to return Kim to her parents was to be implemented. The only point at issue was whether the return of Kim to her parents should be effected before or after the birth of another child to Jennifer Popen, which birth was expected to occur in July, 1976. There was no discussion as to whether the basic decision to return Kim to her parents was a correct or appropriate decision. As a result of that meeting it was decided that Kim would be returned to her parents on May 27, 1976, well before the anticipated birth of the next child.

In the earlier stages of the Society's wardship of Kim, Annals Popen and Jennifer Popen had been allowed to visit with Kim at the Society's offices. In April, 1976, in preparation for Kim's return home, Kim was taken to visit her parents in their home, but those visits apparently led to some problems with Kim in the foster home. As a result, those home visits were discontinued about the end of April, 1976.

On May 27, 1976, Kim was returned to her parents' home.

Mrs. Lo continued to visit the Popen home after May 27, 1976. She made several visits there between May 27, 1976 and August 11, 1976, the date of Kim's death.

On July 6, 1976, Jennifer Popen gave birth to another child, a son, Karie. Jennifer Popen returned to the family home with Karie a week later.

As a result of Karie's birth The Lambton Health Unit again became involved with the Popen family. Mrs. Elizabeth Kuly, a registered nurse with The Lambton Health Unit, visited the family's home on August 10, 1976 in connection with the care of the new baby.

Mrs. Lo was apparently favourably impressed by developments within the Popen household, particularly, it would seem, as they related to Kim following her return home on May 27, 1976.

On July 23, 1976, Mrs. Lo advised Jennifer Popen that the Society would not seek any extension of the six month term of wardship of Kim which had been granted on February 25, 1976. Mrs. Lo further advised Jennifer Popen that the Society would not even seek an order to permit the Society to supervise Kim's care in her home. Apparently Mrs. Lo felt the Society was prepared to permit the order of wardship simply to expire by mere effluxion of time on August 24, 1976.

On July 26, 1976, just three days later, Mrs. Lo became concerned about the situation in the Popen household. She consulted Mrs. Harvey. A decision was made that the Society would apply to the Court for an order under The Child Welfare Act that Kim remain under the supervision of the Society.

Mrs. Lo advised Jennifer Popen of that decision in the evening of July 26, 1976 and she advised Annals Popen of it the next day. Mrs. Lo delivered to each parent a notice that the application would be heard in the Provincial Court (Family Division), of the County of Lambton, on August 4, 1976.

Mrs. Lo arranged with the parents that it was not necessary for them to attend Court on August 4, 1976 as the Society would be asking that the matter be adjourned and that she would advise them of the date to which hearing of the application would be adjourned.

On August 4, 1976, Mrs. Lo visited the Popen home for the last time prior to Kim's death and advised Jennifer Popen that the Society's application for an order for the Society's supervision of Kim in her home would be heard on September 13, 1976.

On August 8, 1976, Mrs. Maughan visited the Popen home for the last time prior to Kim's death.

Kim died on August 11, 1976. She was dead when Jennifer Popen brought her to Sarnia General Hospital. She had suffered a variety of injuries which are described in detail by Dr. Patodia in his report of the post-mortem examination he made on August 12, 1976 pursuant to the direction of Coroner Dr. R.D. MacKinlay.

On September 18, 1976, Jennifer Popen and Annals Popen were arrested. Both were charged with manslaughter contrary to section 217 of the Criminal Code of Canada. The preliminary hearing was begun on June 15, 1977, was continued on June 16, 1977 and was completed on August 11, 1977. Both Jennifer Popen and Annals Popen were committed for trial by a court composed of a judge and jury.

That trial began on November 29, 1977 in the Court of General Sessions of the Peace at Sarnia. Both Jennifer Popen and Annals Popen pleaded not guilty. On December 5, 1977, during the trial Jennifer Popen changed her plea to guilty. On December 9, 1977 the jury found Annals Popen guilty.

Both were remanded for sentence and a pre-sentence report was ordered. On December 21, 1977, Jennifer Popen was sentenced to imprisonment for a term of seven years and Annals Popen was sentenced to imprisonment for a term of one year.

In June, 1981 the appeal of Annals Popen from his conviction was heard and allowed. The conviction was set aside and a new trial was ordered.

In December, 1981 Annals Popen appeared for that new trial in the Court of General Sessions of the Peace at Sarnia. At the conclusion of the presentation of evidence tendered by the Crown Attorney and upon the motion of counsel for Annals Popen, His Honour Judge Chester Misener directed the jury to return a verdict of "Not Guilty." The jury did return such a verdict. Annals Popen was discharged.

Chapter V

Kim's Admission to Hospital on March 22, 1975

This is the first recorded incident of injury to Kim. It is also the first time at which anyone expressed the possibility that Kim was a victim of abuse and a battered baby.

Following her release from hospital shortly after her birth in January, 1975, Dr. Jumean saw Kim on February 6, 1975. She was well. There was nothing unusual noted by Dr. Jumean.

In her testimony upon this Inquiry, Jennifer Popen acknowledged that she had caused all of the injuries to Kim noted in this section. I am prepared to accept that acknowledgement as being true.

In later areas of her testimony upon the Inquiry, she asserted that these injuries were "an accident." She said that Kim had fallen from her chair. I do not accept that later testimony as being the truth.

Dr. Thorp was in attendance in the emergency department at the hospital when Jennifer Popen brought Kim to the hospital. An Emergency Entrance Report was prepared and on March 23, 1975, Dr. Thorp prepared and signed a "History Report."

These documents indicate that at that time, Jennifer Popen reported to Dr. Thorp that she had found only that day that Kim cried when her left arm, which Dr. Thorp said seemed to be "flail", was touched. They do not indicate that Jennifer Popen gave any report of an accident involving Kim.

Dr. Thorp carefully examined Kim for bruises. He found only two small very minor old bruises on the lower left chin. I find it interesting that the history prepared by Dr. Thorp then continues as follows,

> "There was no break in the skin, no signs of cigarette burns, etc."

It seems clear to me that Dr. Thorp had some concern as to the welfare of Kim and the possibility that she had been abused. If he did not have such concern then there would appear to be no reason for him to have made reference to "no signs of cigarette burns."

The diagnosis was that Kim's left humerus was fractured. An oblique fracture was shown on X-ray.

Dr. Thorp testified that he questioned Jennifer Popen and "[got] two or three different stories inside a few minutes." He said that by reason of Kim's age and development and the type of injury the matter was "extremely suspicious." So he had inquired as to whether Kim had fallen or had been lifted or grabbed by someone. The portion of the Emergency Entrance Report signed by Dr. Thorp records "no history fall." He testified that Jennifer Popen gave conflicting stories as to where Kim slept in a proper crib or in a dresser drawer used as a crib, and it had fallen. He continued

> "All sorts of stories, you just couldn't follow it so fast, she talked fast and there was different stories, she was jabbering away and nervous, apprehensive and so on."

The history prepared by Dr. Thorp made reference to some concern expressed by Mrs. Hewitt, Head Nurse, that Kim seemed to resent having her legs lifted. So X-rays of the spine and femurs were ordered.

To use his own expression, Dr. Thorp was merely "covering that particular day" for Dr. Jumean. He said Dr. Lota was Dr. Jumean's "locum tenens." So he informed Dr. Lota of Kim's admission to hospital.

The History Report bears a notation to indicate that a copy of it was prepared for Dr. Jumean. Presumably that copy was delivered to him or his office.

Dr. Singh was requested to examine Kim. He said he was called by Dr. Thorp. The consultation form dated March 25, 1975 appears to be signed by Dr. Lota as the attending doctor. Dr. Singh was aware that Dr. Jumean was the family doctor, but was on vacation and Dr. Thorp was "covering" for him.

In the portion of the consultation form above the signature of Dr. Lota, in part, the reason for the request for consultation is given as "? Batter Baby syndrome." I take that to mean there was some question or suspicion in the mind of the writer that Kim was an abused child.

Dr. Singh examined Kim on March 26, 1975. In his own handwriting that day he set forth his findings on the consultation form. Amongst what he cited under the heading "Impression" was "3) Battered child syndrome" and amongst what he cited under the heading "Suggest" was "4) ask social service worker to look into this family environment."

On March 27, 1975, Dr. Singh had prepared a typewritten report upon that consultation.

That typewritten report states that Jennifer Popen reported to Dr. Singh that Kim was crying, that Jennifer Popen wanted to change Kim's clothing and in so doing found that Kim's left arm was quite stiff, and that when Jennifer Popen tried to straighten it she heard a click and then brought Kim to hospital.

Under the heading of "Impression" Dr. Singh wrote "Questionable battered child syndrome" and then continued:

> "It is extremely unusual to break a solid, long bone such as the left humerus, on just by changing the child's hand (sic). This family should be investigated by first, a service worker for the environmental and social status the family lives in."

Dr. Singh described the fracture of the left humerus as a severe transverse fracture with displacement.

In his testimony upon the Inquiry Dr. Singh said that "questionable child abuse syndrome" was entertained because Jennifer Popen's story as set forth in the history was "very, very unusual." On the basis of his training and experience he formed the opinion that that story was not compatible with the injury which Kim had suffered.

In Dr. Singh's opinion "severe force or strong compact force or a violence could cause that sort of fracture on a long bone of that size." I take that to mean such force or violence would be required to cause such a fracture.

Dr. Singh's typewritten report was another instance of eerily accurate prophecy. He wrote:

> "I would strongly suspect that the battered child syndrome is present and if we do not protect this child at the present stage, she might end up with a fractured skull or some other fractures later on in her life."

That typewritten report indicates that copies were prepared for Dr. Jumean and Dr. Lota who Dr. Singh understood to be in partnership. Dr. Singh said another copy would have been placed on Kim's chart at the hospital.

Dr. Singh testified that he asked Dr. Thorp to refer the case to the hospital's social service worker, Mr. Khattab, to investigate the environmental and social status of the family and to "give us a feedback on the circumstances the family lives in." Dr. Singh did not expect to receive any of such "feedback" which he felt would go to the family physicians, Doctors Thorp and Jumean.

Kim was discharged from hospital on April 3, 1975. The discharge note was to the effect that she was found to have a fractured left humerus "following a fall." That was signed by Dr. Jumean. That explantory statement is not in keeping with the facts as shown by the evidence given upon the Inquiry.

Dr. Jumean testified that he had not seen Kim during that period of hospitalization. He acknowledged that his office had received copies of reports from Dr. Thorp and Dr. Singh, but that he had not reviewed them at that time but did so "when the story got known." He did not elaborate upon that, but I presume it was after Kim's death, perhaps as late as when the parents appeared for trial in December, 1977.

Dr. Jumean testified that he had not reviewed Kim's case history or the earlier reports with reference to her admission to hospital on March 22, 1975, when he admitted her to hospital later in April, 1975. He testified that in April, 1975 he made no observation of child abuse in respect of Kim. He testified that he had not reviewed Kim's file because he relied on Dr. Lota to draw his attention to anything "out of the ordinary...and unfortunately it wasn't."

Mr. Khattab testified that he first became aware of Kim in March, 1975. As he put it:

> "It was referred to me from the children's ward at the hospital at that time just to talk with the mother because the child was in the hospital at that time with some twisted arm."

He said he was aware that Kim had suffered a fractured arm. The supposed limitation, "just to talk with the mother", is not in keeping with the facts as shown by the evidence given upon the Inquiry.

Mr. Khattab testified that on March 31, 1975, he had spoken to Jennifer Popen who claimed that she was changing Kim and it "happened by chance." He testified that Jennifer Popen seemed very innocent, that he believed her and accepted her explanation and that the case was not reported to a children's aid society or Crown attorney.

I had the impression that Mr. Khattab could not believe that anyone could punish a two month old child. He said:

> "I feel that she [Jennifer Popen] is a responsible mother and I have no doubt -- I cannot suspect that this happened as an

abuse, but it can be a chance as she stated."

Mr. Khattab testified that he had no information concerning "the battered child syndrome" and he seemed to indicate that as it was not within his speciality originally he did not care to apprise himself of it. That seems to me to be a startling admission of wilful blindness or ignorance.

Mr. Khattab testified that he had not really been instructed by anyone as to the purpose of his involvement, but he did say that he spoke with Dr. Singh, who told him that Kim had suffered an unexplained injury and asked him to look into the family background. He said he told Dr. Singh he had spoken to Jennifer Popen and that he believed her when she said that "this has happened by accident."

Dr. Singh testified that he had not received a report from Mr. Khattab and had not discussed the matter with him until Kim's admission to hospital in August, 1975.

I prefer the evidence of Dr. Singh to that of Mr. Khattab in that area. I am satisfied that Mr. Khattab knew why the matter had been referred to him and what was expected of him. If he was in any doubt he had access to Kim's hospital file including Dr. Singh's report recommending referral to the social worker and thus could easily have learned what was expected of him and, if still in doubt, he could have inquired of Dr. Singh or one of the other doctors involved.

Mr. Khattab testified that he felt Jennifer Popen was a responsible mother and that Kim had not been injured as a result of abuse. He testified that, as he viewed the events in retrospect, Jennifer Popen had fooled him.

Mr. Khattab testified to the effect that, as instructed by Dr. Singh, he had spoken with Jennifer Popen and they discussed the background of the family and Kim's care. No notes of that discussion were prepared and there was no evidence to indicate that any information obtained by Mr. Khattab, if indeed he obtained any, was passed to Dr. Singh, who had asked for it, or to anyone else. Even if it appeared to Mr. Khattab that all was in order, it might have been of interest to Dr. Singh and Dr. Jumean to know the nature of the discussion between Jennifer Popen and Mr. Khattab, particularly the explanations given by Jennifer Popen as to how Kim was cared for and how she was injured.

Mr. Khattab does not stand alone to receive criticism for his failure to report upon his performance of the task assigned to him at Dr. Singh's suggestion. There is no evidence that any doctor or any hospital official pursued the matter with Mr. Khattab.

In that connection I accept Dr. Singh's explanation that he expected Mr. Khattab to report to the family doctors, Dr. Jumean or Dr. Thorp.

In the circumstances of the case I am not inclined to be critical of Dr. Thorp for not pursuing the matter to ensure that Mr. Khattab completed the investigation ordered by Dr. Singh. Dr. Thorp was "covering" for Dr. Jumean.

Dr. Jumean's explanation that he had not reviewed Kim's file because Dr. Lota had not drawn it to his attention as containing anything unusual is not acceptable to me. I do not think it is valid. He should have read it whether or not Dr. Lota drew it to his attention.

In all of this no one made any report to a children's aid society or Crown attorney as required by section 41 of The Child Welfare Act.

Perhaps Mr. Khattab expressed most succinctly the reason no one made any such report. He was asked why he had not made the required report. His reply was:

> "If I do not know -- if there is no evidence before me because I can be sued by the parents also. -- I can be sued by the parents if I give something which I am not sure of. On what basis I say to them that child is abused? ....a first case for me I was of course very careful, unless I have evidence I not do it."

With all due respect to Mr. Khattab and anyone else who was like minded, he seems to have been ignorant of or to have misconstrued the provisions of section 41 of The Child Welfare Act, particularly sub-section 2. He placed far too high a standard for the nature of information of physical ill-treatment or need for protection of a child which would require or justify a person to report such information pursuant to section 41 of the The Child Welfare Act.

While it may be that failure to do so had no substantial effect upon the eventual handling of Kim's case by the Society, it is at least unfortunate that no one involved in her admission to hospital made any report to a children's aid society or Crown attorney in compliance with section 41 of The Child Welfare Act.

It would appear that three doctors, Doctors Singh, Thorp and Lota, had expressed some concern as to the possibility that Kim had been abused. That concern was expressed in writing in documents to which Dr. Jumean and hospital staff, including Mr. Khattab, had access and for the safekeeping of which hospital staff were responsible. On his own evidence Mr. Khattab was asked by a member of the nursing staff of the hospital to talk with the mother. The hospital files contain a document showing he was expected to do more. If Mr. Khattab was not fully or properly informed of the concerns and suspicions of the doctors, it would seem to be his responsibility to inform himself and that became ultimately the responsibility of the administration of the hospital.

In my opinion the three doctors, Doctors Singh, Thorp and Lota, were at least justified, if indeed they were not required, by section 41 of The Child Welfare Act, to report their findings and suspicions to a children's aid society or Crown attorney.

By reason of his failure to apprise himself of the contents of Kim's file, as a result of which he remained ignorant of the suspicions of the other doctors, Dr. Jumean could not and did not make any report pursuant to section 41 of The Child Welfare Act. Had he read the file he too would have been justified and required to make such a report.

I do not feel that Dr. McCrudden was in a position such as Doctors Jumean, Singh, Thorp and Lota were. He merely examined the X-ray films and reported thereon. He had no knowledge of the case except what he saw on the films. He did not have sufficient information to require him to make any report pursuant to section 41 of The Child Welfare Act.

Evidence given by various doctors and by Mrs. Hewitt revealed a strong tendency on their part to assume that someone else, the family doctor, should and would, if he felt it appropriate to do so, make any report required by section 41 of The Child Welfare Act. The doctors appeared to believe that the ethics of their profession would limit or prohibit any such report by any doctor other than the doctor in charge of the case. Mrs. Hewitt, whose evidence in this area was supported by that of Dr. Robert Bates, an expert in the field of child abuse, indicated that, by training, nurses reported to the doctor in charge of the case and would rely upon that doctor to make any other or additional report that might be required.

In all of this there seemed to be a reliance upon another or others to make the report required by section 41 of The Child Welfare Act.

I do not think it appropriate for Dr. Jumean not to have reviewed Kim's file prior to signing the document in connection with her release from hospital on April 3, 1975 or on her admission to hospital by him later in April, 1975. I have serious reservations as to what reliance anyone can place upon the contents of the form purporting to authorize Kim's discharge from hospital and to give some details of her injury and treatment, Dr. Jumean signed it. He had not been involved in any way with the occurrence apart from the fact that he was physician to Kim's family and Dr. Lota was associated with him and Dr. Thorp was "covering" for him in his absence.

That discharge note signed by Dr. Jumean would appear to be completely at variance with other records and reports. It would indicate that the injury was "following a fall". Nowhere else on that document, the admission portion, not in the form signed by Dr. Lota requesting Dr. Singh's consultation, nor in Dr. Singh's consultation report is there any reference to Kim having fallen. More seriously, Dr. Thorp, in the Emergency Entrance Report and the subsequent History Report, clearly states "no history fall" and "no history of accident" respectively.

One is left to wonder as to the basis of Dr. Jumean's discharge note. In his evidence he said he prepared it after Kim's discharge from hospital. He was not sure how long after. As he put it:

> "...the child was not there. The records [are] there so I look at the records and from the records..."

One can only wonder what records he read. It seems clear he did not read the request for Dr. Singh's consultation, nor Dr. Singh's consultation report nor Dr. Thorp's history nor even the balance of the very sheet of paper on which he, Dr. Jumean, was writing in other areas of which Dr. Thorp had made some notes.

In my view, Dr. Jumean, or Dr. Lota for him, should have pursued the matter with Mr. Khattab. Such inquiry by Dr. Jumean may have encouraged Mr. Khattab to investigate somewhat more fully rather than to rely upon a mere discussion with Jennifer Popen, a discussion which Mr. Khattab himself described as an interview and not an investigation. But Dr. Singh had recommended an investigation of the family.

In my view, Mr. Khattab should not have been satisfied with only an interview with Jennifer Popen. He should have examined the files and reports in the hospital. On his own evidence they were available to him. One might reasonably expect, as Dr. Singh did, that one employed as a social worker would be aware of the significance of any expression such as "battered baby syndrome" or "child abuse." Mr. Khattab claimed to be not familiar with those expressions. He should have begun the same sort of investigation that any social worker, such as a social worker employed by the Society, might reasonably have been expected to undertake. If he had concern as to his own limitations he should have sought help, probably from the Society and the Sarnia

Police Force. In any event from his reading of the file he should have made a report to a children's aid society or Crown attorney.

Mr. Khattab kept no written record of what he did in response to Dr. Singh's request passed to him by the nursing staff. It would seem to me that it is not unreasonable to expect that when a doctor makes a request for some investigation to be conducted by a hospital's social worker that the procedures adopted by the hospital would require that social worker to respond in writing or at least to record his response so that it would be available to all concerned with the case. Here I am not satisfied that Mr. Khattab in any way responded so as to inform Dr. Singh or anyone of his actions following Dr. Singh's request. Certainly there is no written record of any such response and I have already stated that I prefer Dr. Singh's testimony that he received no response whatever from Mr. Khattab.

In the same vein, while no member of the hospital's staff pursued the matter to ensure that Mr. Khattab conducted the required investigation and reported thereon to the doctor requesting it, none of the doctors involved, Doctors Singh, Lota and Jumean, pursued the matter. I have earlier mentioned that Dr. Thorp did not either. In effect they all allowed it to lie dormant with Dr. Singh's request left in Kim's file, unattended for all practical purposes.

I have some deep concern that Dr. Singh in his typewritten consultation report said

> "I think this should, of course, be discussed and kept confidential."

The reference was to the suspected instance of abuse of Kim. In his evidence upon the Inquiry he indicated that he took that stance because he was expressing in the report merely an opinion, as opposed to a final diagnosis, and was awaiting further information, as from Mr. Khattab, and did not want his preliminary view to be leaked to anyone. He said this was for Kim's protection so as to ensure that Jennifer Popen would not remove her from hospital if she, Jennifer Popen, became aware that there was suspicion and that an investigation might result.

On the surface the suggestion of confidentiality would seem to be contrary to section 41 of The Child Welfare Act if it counselled the withholding of information from a children's aid society or Crown attorney.

There is also some inconsistency in Dr. Singh's evidence here that he was awaiting information from Mr. Khattab. Earlier he had said he did not expect Mr. Khattab to report to him.

As to Mr. Khattab's qualifications, I have some concern that his decision to accept Jennifer Popen's account that Kim's injury occurred by "chance", which I interpret to mean "accident", appeared to be based in large measure on his belief that no one could so harm or punish a child so young. I contrast that basic concept with the evidence of Dr. Bates. Dr. Bates testified that the higher percentage of abuse occurs in respect of infants, to one, two or three years of age, before the infants develop enough of their survival skills and that some children, through no fault of their own, may be abused because they are unwanted or wanted for the wrong reasons or because they are difficult or different or because of some particular situation in the family. As Dr. Bates put it these are "high risk kids." I accept Dr. Bates' opinion. Mr. Khattab's basic concept is not in accord with that opinion.

Dr. Bates in his evidence seemed to suggest that medical personnel should be alert to the presence of sexual abuse. In the light of the post-mortem examination that would appear to be significant in relation to Kim. Neither Dr. Thorp nor Dr. Singh made special reference to any examination of Kim in that regard. But, from Dr. Thorp's evidence and my assessment of Dr. Singh, I feel that I am satisfied Kim's whole body, including areas that might be subjected to sexual abuse, was examined in connection with this hospitalization and nothing untoward was found other than as noted by Dr. Thorp and Dr. Singh.

Dr. Bates in his evidence expressed the view that sometimes parents present a child to doctors or hospitals in the hope that the doctors or hospitals will become aware that the child has been abused.

Jennifer Popen in her evidence seemed to be suggesting that some of what she did was really a cry for help. I am inclined to believe that is an explanation of recent invention. In my view any "cry for help" was well concealed and submerged in lies and deceptions by Jennifer Popen throughout the whole of Kim's life and for a long time after Kim's death.

In reviewing the evidence relating to this incident in Kim's life it seems to me that if all others involved in Kim's admission to and care in hospital had done as Dr. Singh had done, the eventual sad conclusion to her life might have been avoided. Unlike others, Dr. Singh reduced to writing in some detail his assessment of the entire situation. He did not confine his comments only to Kim's physical or emotional condition. He wrote of the conduct of Kim's parents, or one of them, and the variety of inconsistent stories or explanations for her injuries.

Even if all others had written as fully as Dr. Singh, a happier result than occurred still depended upon Dr. Jumean. He was the family physician who appeared to have overall responsibility for Kim's medical care at the time. No matter what others wrote or recorded their best efforts in that regard would be ineffective unless Dr. Jumean read and evaluated what they wrote and, if not then knowledgeable as to the symptoms of child abuse and the full significance of what he read, consulted Dr. Singh or someone similarly trained and qualified.

I do gather from the evidence that detection of child abuse or of the possibility thereof is a most difficult task and that many of the indicia thereof are most subtle. Training and experience are essential to enable one to recognize the existence of certain indications of the possible existence of abuse and then to ascribe to them the significance they deserve.

At least some of the medical doctors, nurses and hospital staff, including Mr. Khattab, had ample basis on which to justify a report to a children's aid society or Crown attorney under section 41 of The Child Welfare Act. Their failure to make such a report gave some credence to Mrs. Harvey's suggestion that their failure to do so contributed to some of the subsequent misadventures which befell Kim. Such failure, if failure it be, by those doctors and other hospital personnel on March 22, 1975 and immediately thereafter had only a minimal, if any, effect upon the development of the tragic story of Kim's life and death.

One may speculate as to what might have happened had one or more of the doctors or hospital personnel made a report under section 41 of The Child Welfare Act at that time. That they did not contributed to the forming of the first arc of the circle of tragedy which eventually ringed Kim and led to her death.

Chapter VI

Significant Events in Kim's Life from April 3 to August 31, 1975

There were a number of significant events in Kim's life during this early period. Evidence with reference to some of those events was supported in part by written records prepared at about the times they occurred. With reference to others, witnesses relied purely upon memory. At least for that reason the evidence is fragmentary and inconsistent in relation to some of the incidents.

Jennifer Popen in her testimony seemed to recall the various injuries suffered by Kim during this period, but was doubtful of times and causes. In respect of some she admitted she had caused them. Others she maintained were "accident(s)."

Dr. Jumean admitted Kim to St. Joseph's Hospital on April 28, 1975. The admission form indicates the existence of upper respiratory infection, bronchitis. She was discharged from hospital on May 2, 1975. No indication of ill-treatment of Kim was noted. But, as I have found earlier, Dr. Jumean had not read the reports or case history with reference to Kim's admission to hospital on March 22, 1975.

Dr. McCrudden performed a chest X-ray of Kim on April 28, 1975 in connection with her admission to hospital that day. At a later time, after further X-rays of Kim on September 1, 1975, he had reason to examine that X-ray film again and he saw thereon no evidence of any fracture of any ribs.

Dr. Jumean also had notes of two visits with Mrs. Popen, apparently with references to Kim, one someday in May 1975 and the other on May 27, 1975. Nothing untoward was noted by Dr. Jumean. In his opinion Kim was well.

Dr. Jumean testified that on June 6, 1975, Kim was brought to him for examination. I am satisfied that Kim was brought to Dr. Jumean by Fay

Popen, an adult relative, who, by reason of her own circumstances was unable to testify upon the Inquiry.

Dr. Jumean's notes in his file are not clear as to the date of that visit. Originally in his testimony, he said the visit was on June 6, 1975. Later he said it was on June 16, 1975.

I am satisfied that Dr. Jumean's telephone call to the Sarnia Police Force was made on June 16, 1975 as recorded by the Sarnia Police Force and not on June 6, 1975 as initially testified by Dr. Jumean.

Dr. Jumean testified that Fay Popen was anxious and worried that Kim was being mistreated. He said he examined Kim.

Dr. Jumean testified that he had telephoned the Sarnia Police Force on the day of that visit.

I should note that Dr. Jumean's testimony was most difficult to follow. In one of his responses to counsel he seemed to indicate that Fay Popen told him that Annals Popen would consume alcoholic beverages and then beat Jennifer Popen, who would take it out on Kim. He said he had made no note of that. He said he knew that Annals Popen drank, but he said Annals Popen was not an aggresive fellow, but was rather quiet. Then he went on to say that he was told, not by Fay Popen, but apparently by Jennifer Popen, that when Annals Popen drank he hit "them", apparently Jennifer Popen and Kim. He continued to say that "sometimes she [Jennifer Popen] makes excuses that the baby-sitter", but he did not continue to explain what he was told about the baby-sitter. Then he went on to say that Jennifer Popen told him that when Annals Popen got drunk he, Annals Popen, hit the baby, Kim.

Maybe Dr. Jumean was another who heard from Jennifer Popen a series of contradictory stories told in rapid fire succession so that they formed really an unintelligible melange.

Dr. Jumean said it was not until long afterward when Jennifer Popen was incarcerated, I would presume after her conviction in December, 1977, that he heard from her that she hit Kim after Annals

Popen had hit her, Jennifer Popen. He was in error in saying that.

When confronted with the evidence and records of the members of the Sarnia Police Force to the effect that he had told Staff Sergeant Allan of that alleged sequence of assaults during a telephone conversation on June 16, 1975, Dr. Jumean acknowledged that he could have been told by either or both of Jennifer Popen and Fay Popen that Annals Popen would hit Jennifer Popen who in turn would hit Kim.

Dr. Lucy Duncan, Medical Officer of Health of the County of Lambton and Director of The Lambton Health Unit, testified that during a telephone call to her on June 16, 1975 Dr. Jumean had told her of the alleged "chain reaction" of assaults.

The records of The Lambton Health Unit prepared in June, 1975 make reference to that chain reaction in this way:

> "Report (hospital report) of mother beating baby. Husband drunk and beats wife."

Those records also contain the following:

> "Dr. Jumean notified police of this incident. Baby had lacerations of lip and multiple bruising."

When Dr. Jumean saw Kim on June 6 or 16, 1975 he recorded his observations of Kim as follows:

> "Baby battered syndrome. Multiple bruising of arm and laceration lower lip with an abrasion on face."

Dr. Jumean testified that he telephoned the Sarnia Police Force that same day. His records produced upon the Inquiry make no reference to that telephone call nor to the call to The Lambton Health Unit. In his evidence upon the Inquiry he did not mention his telephone call to The Lambton Health Unit.

Staff Sergeant James Allan, Sarnia Police Force, testified that he, while on duty, had received a telephone call from Dr. Jumean on Monday, June 16, 1975.

Staff Sergeant Allan produced a City of Sarnia Police Force Investigation Report, numbered 75-287-i.

The starting point of that form as noted thereon is 2:30 p.m. on June 16, 1975. The first page of the form, signed by Staff Sergeant Allan, refers to Dr. Jumean as complainant and there is a typed resume of the contents of the telephone conversation and of some of the police activity with reference to the matter.

Staff Sergeant Allan testified that that form was prepared in accordance with the procedure of the Sarnia Police Force and that other entries were placed upon it chronologically as they occurred.

The telephone conversation as recorded on that form by Staff Sergeant Allan was that Dr. Jumean called to report a battered child; that Dr. Jumean stated that someone, who wished to remain anonymous, had brought Kim, the child of Jennifer Popen and Annals Popen, to Dr. Jumean's office on that date, June 16, 1975; that Dr. Jumean stated that about six weeks earlier Kim was hospitalized with a broken arm and that Jennifer Popen, the mother, had at that time said Kim had fallen; that Dr. Jumean had said that about three weeks earlier Kim was treated for a respiratory ailment and at that time the doctor observed that Kim had a black eye; and that Dr. Jumean stated that at this time Kim had a cut lip and severe bruises over the face, neck and buttocks.

The investigation report above Staff Sergeant Allan's signature continues:

> "Hearsay information received by the doctor was to the effect that the father comes home drunk and beats up the mother who in turn beats up the child for retaliation."

Use of the adjective "hearsay" seems to me to import the meaning that Dr. Jumean received that information from someone other than Jennifer Popen or Annals Popen, presumably from Fay Popen, who took Kim to Dr. Jumean's office on June 16, 1975 because of her concern for Kim's well-being.

Bearing in mind the observations made by the Society's personnel on June 17, 1975, that ten day delay, from June 6, 1975, when he may have examined Kim if his initial evidence and interpretation of his notes are correct, although he could be in error because of poor writing on the file card, until June 16, 1975, when he reported, by telephone, to the police and The Lambton Health Unit, may have substantial significance.

On medical evidence presented upon the Inquiry I am satisfied that the healing process may have resulted in injuries which were readily apparent to Dr. Jumean on June 6, 1975 being difficult for anyone other than a medical doctor, and perhaps even for a medical doctor, to detect on June 17, 1975. Indeed Mrs. Saul testified that on examining Kim on June 17, 1975 Mrs. Hoad had commented that the bruises were just about healed. Mrs. Saul's recording in the files of the Society, restated in her oral testimony upon the Inquiry, was that Mrs. Fay Popen said on June 17, 1975, that the bruises were then about two weeks old.

Staff Sergeant Allan testified that he had no investigative personnel available to him for this matter on June 16, 1975. He testified that on June 17, 1975 he orally assigned the investigation to Police Constable Gander and instructed Police Constable Gander to go to the Society and have one of the Society's workers accompany him to the Popen home.

Police Constable Gander testified that instructions were given to him orally by Staff Sergeant Allan who said Dr. Jumean had informed him that Kim had been abused and was supposed to have marks or bruises on her body. He said he was not then told of the hearsay information as to a chain of beatings from Annals Popen to Jennifer Popen to Kim, but he did learn of it later.

Police Constable Gander testified that on June 17, 1975, at about 10:30 a.m., he went to the Society's office and spoke with Mrs. Dick to inquire if the Society had a file on the family and to seek a worker to go with him and examine Kim.

Police Constable Gander, accompanied by Mrs. Saul and Mrs. Hoad, a worker and volunteer respectively of the Society, assigned by Mrs. Dick, went to locate Kim. The address originally given to Police Constable Gander for the Popen home was out of date; so, through the Sarnia Police office who contacted Dr. Jumean, he obtained an address where the child was located. That address was the home of Mrs. Fay Popen.

Police Constable Gander stood by and watched while Mrs. Saul and Mrs. Hoad undressed Kim and examined her. He saw no marks upon Kim and overheard Mrs. Saul and Mrs. Hoad exchange remarks to the effect that Kim appeared to be all right. He said he understood there may have been a light bruise around the chin or mouth area.

Police Constable Gander testified that while Mrs. Saul and Mrs. Hoad were with Kim and Mrs. Fay Popen, Jennifer Popen and Annals Popen arrived. He said Jennifer Popen appeared to be upset. In the presence of himself, Mrs. Saul and Mrs. Hoad she claimed to be a good mother. He said Mrs. Saul explained to her the purpose of the visit and that Kim could be removed from her home by the Society if she had been abused. He said Annals Popen then spoke up to deny any abuse by the parents, but to claim that Kim had accidents such as falling to the ground. He said Jennifer Popen took Kim from Mrs. Saul who explained to her that the report which had led to the visit appeared to be unfounded and that there was no indication of abuse.

Police Constable Gander testified that Mrs. Saul told Jennifer Popen that she, Mrs. Saul, would call to see her within a week to advise her as to Kim's care and to make observations. Police Constable Gander went on to say that later in the police cruiser Mrs. Saul repeated that she would visit Jennifer Popen within a week or so and then would advise the Sarnia Police Force as to how things were proceeding.

Mrs. Saul testified that she had told Police Constable Gander that the Society would be involved for a long time, but she felt she said no more than that and she denied telling him she would make any report to him.

The Investigation Report of the Sarnia Police Force under date of June 17, 1975 states:

> "Sandy Saul will contact us next week and let us know what the reaction and response is of Mrs. Jennifer Popen."

When coupled with other evidence of a telephone call by Police Constable Gander to Mrs. Saul, that notation supports the evidence of Police Constable Gander as to Mrs. Saul's remark to him that she would report to the Sarnia Police Force after her visit to Jennifer Popen. Thus I accept that portion of Police Constable Gander's evidence in preference to that of Mrs. Saul relating to that point.

The evidence of Mrs. Saul was that on June 17, 1975 she was told by Mrs. Dick that Police Constable Gander had reported to the Society that the Sarnia Police Force had on June 16, 1975 received an anonymous call to the effect that Kim had multiple bruises on her face and neck. Mrs. Saul testified that, enroute to visit Kim, Police Constable Gander made reference to the anonymous call and to some information the Sarnia Police Force had received to the effect Kim had, during the preceding six weeks, been admitted to hospital on one occasion with a broken arm and on another occasion with a black eye. Mrs. Saul said Police Constable Gander told her Dr. Jumean was Kim's doctor.

Mrs. Saul testified that, on locating Kim at the home of Mrs. Fay Popen, she and Mrs. Hoad examined Kim. She said Kim appeared physically normal, but Mrs. Fay Popen pointed out some faint bruises, which Mrs. Saul would not have noticed if they had not been pointed out, and said Kim had received those bruises about two weeks earlier. That reference to time tends to support the conclusion that, while Dr. Jumean may have seen Kim on June 6, 1975, he did not advise the Sarnia Police Force until June 16, 1975. Mrs. Saul also noticed a rather fresh cut on Kim's lip. She said Mrs. Fay Popen told her Jennifer Popen had caused that cut and another on Kim's tongue while using a spoon to force Kim to eat.

Mrs. Saul said Mrs. Fay Popen was concerned as to the care Kim had received.

Mrs. Saul said that later, after Kim had been dressed, she was holding Kim when Jennifer Popen and Annals Popen arrived. She said Annals Popen remained in the background and said very little. Apparently Jennifer Popen was the dominant partner and Annals Popen the passive partner. Jennifer Popen answered Mrs. Saul's questions or comments and prevented Annals Popen from talking. Mrs. Saul's assessment was that "Jennifer Popen seemed to be running the family."

Mrs. Saul said Jennifer Popen grabbed Kim and started toward the door. She said Jennifer Popen did not respond to comments addressed to her by Mrs. Saul and appeared to be very hostile. Police Constable Gander prevented Jennifer Popen from leaving with Kim. Mrs. Saul said she explained to Jennifer Popen that the Society was concerned about Kim's welfare and was available to help in her care. Mrs. Saul said that in discussion about the cut on Kim's lip Jennifer Popen acknowledged that she had had a problem with Kim's feeding. Mrs. Saul said that Jennifer Popen resisted the suggestion that someone from The Lambton Health Unit would come to help with that problem, saying that she knew how to care for her "children." Mrs. Saul said Jennifer Popen vehemently denied that she had ever abused Kim.

Jennifer Popen testified that she told Mrs. Saul, Mrs. Hoad and Police Constable Gander that before she would let anyone take Kim from her she would leave Canada, presumably with Kim.

I think that Mrs. Saul's evidence as to Kim's behaviour through all of this is quite interesting and important. She said Kim was "very, very content with the aunt [Mrs. Fay Popen], smiling and just gurgling like a child does." Kim seemed "pretty good" with Mrs. Saul and did not overly react even though Mrs. Saul was a stranger. Then, Mrs. Saul testified:

> "But when [Kim] went into [Jennifer Popen's] arms....she fussed and squirmed and just wouldn't settle...began to really

> fuss...did not want the mother feeding her."

Mrs. Saul said she was very concerned about that as perhaps an indication that Kim had been abused. I would presume she was referring to the possibility that Kim had been abused by Jennifer Popen.

Thus, in June 1975, the Society, in the person of Mrs. Saul and Mrs. Harvey to whom Mrs. Saul immediately reported her observations, was aware of a possible problem in the relationship between Jennifer Popen and Kim. Kim's reaction to her mother and to Jennifer Popen's attempts to feed her and generally Jennifer Popen's handling of Kim perhaps were indications of the possibility of child abuse that social workers are alert to note, signals of possible danger to the child.

Mrs. Saul testified that, on leaving the Fay Popen home, she told Jennifer Popen that someone from the Society

> "would be back in the very near future -- in the next week or so."

Mrs. Saul said she had decided that a nurse from The Lambton Health Unit should visit the home, either with the Society's worker or alone, because she felt Jennifer Popen needed help in learning to care for Kim. Mrs. Saul said that on her return to the Society that day she recommended that a nurse from the Lambton Health Unit become involved.

Mrs. Hoad, a qualified nurse who served as a volunteer with the Society, testified that she accompanied Mrs. Saul and Police Constable Gander on their visit to see Kim on June 17, 1975. She said she was merely a witness, that Mrs. Saul was the professional social worker. She said she looked at Kim from a distance, but saw no injuries which she remembered other perhaps than a cut of the lip which may have healed. She recalled that Mrs. Fay Popen had said bruises had been caused sometime earlier. She did remember the arrival of Jennifer Popen and Annals Popen. She said Jennifer Popen was very irate and very hostile toward Mrs. Saul, Mrs. Hoad and Police Constable Gander.

Mrs. Hoad testified that Jennifer Popen "snatched" Kim and handled her "very abruptly or roughly." She described Annals Popen as being "very passive...like a shadow in the background." She said she was concerned

> "about the [emotional] maturity of the parents....the mental health aspect of this case....the hostility of the mother [and that Jennifer Popen] was very, very young and the way in which she handled her infant."

Thus, in June, 1975, the Society had available to it an expression of concern by a person with some degree of expertise, a qualified nurse, as to conditions in the Popen family and Jennifer Popen's treatment of Kim. That concerned person was also a volunteer worker with the Society.

Mrs. Saul testified that on her return to the Society's office on June 17, 1975, she spoke briefly with Mrs. Dick to state that she

> "was very concerned about the situation."

Mrs. Saul testified that she thought there was a very good possibility that Kim "definitely had been abused" and, from Kim's behaviour and Jennifer Popen's reaction to Mrs. Saul's visit,

> "might once again end up abused or in a situation of danger."

That was a sad and accurate prophecy. It was not unlike Dr. Singh's comment in March, 1975.

Mrs. Saul testified that after speaking briefly with Mrs. Dick she immediately spoke with Mrs. Harvey, her supervisor, to explain the situation and her reasons for concern that Kim was an abused child, without knowledge as to by whom Kim had been abused, but with attention directed to Jennifer Popen because of her apparent dominant position in the family and because she had answered all the questions put by Mrs. Saul.

Mrs. Saul testified that her oral report to Mrs. Harvey was quite lengthy and detailed. She said that was because she felt and recommended to Mrs. Harvey that the matter should be transferred immediately to a social worker for long term service rather than being left with her, Mrs. Saul, as the investigating worker whose role was that of initial investigation and short term counselling. Mrs. Saul said that it was not unusual for a case to be so transferred immediately if, as she felt was the case in reference to Kim's family,

> "it was very obvious that involvement with the agency [Society] and this particular family would be a long term."

Mrs. Saul testified that she explained to Mrs. Harvey why she made that recommendation for immediate transfer and she said that Mrs. Harvey agreed with her that

> "this case definitely needed to be transferred to a long term worker."

Mrs. Saul testified that Mrs. Harvey mentioned that the case would be transferred, perhaps to Mr. Carter.

Thus, as early as June 17, 1975, an experienced and capable social worker employed by the Society, Mrs. Saul, had formed and voiced to her superior, who appeared to concur, suspicion that Kim had been abused and that possibly Jennifer Popen had inflicted that abuse.

Mrs. Saul testified that she had prepared some hand-written notes, perhaps before talking with Mrs. Harvey, which would have been destroyed when the material in them was prepared in typewritten form. She said she had given those hand-written notes to Mrs. Harvey. She said that the portion of the record of the Family Services Department of the Society under date June 17, 1975 appearing opposite her initials and those of the typist, "SS/mh," was a correct transcription of her handwritten notes although she could not recall having written the last few lines of that typewritten item. That latter portion made some comment upon Jennifer Popen and Annals Popen and mentioned Dr. Jumean. She said all of that recorded information was known to her on June 17, 1975.

Mrs. Saul said she had understood that a file had been opened at once and that her handwritten notes had been placed in that file for transcription. I can only surmise that that understanding flowed from her discussion with Mrs. Harvey. The transcription of Mrs. Saul's notes contains reference to Kim's upset reaction to Jennifer Popen, particularly when Jennifer Popen prepared to feed her. The transcription describes Jennifer Popen as being "extremely defensive and hostile." The transcription contains the following statements by Mrs. Saul:

> "I believe it would be advisable to take a L.H.U. [The Lambton Health Unit] nurse and introduce her whether Jennifer [Popen] wants one or not. As well this defensive hostile young mother should be closely supervised considering the history of the recent six weeks."

The transcription also contains the name and telephone number of Dr. Jumean who is described as being the family physician.

Mrs. Saul testified that, while she felt she had achieved quite a bit on June 17, 1975, clearly the investigation was not then complete and she may well have failed to note all areas of concern or subtleties of possible danger to Kim. As she put it:

> "I didn't think that I had found everything out by any means...There were more facts I felt needed to be discovered..."

Clearly the worker to whom the case was to be transferred would have been expected to complete the investigation in greater depth, including inquiry as to the allegations of prior incidents of injury to Kim and inquiry of the medical personnel involved in the diagnosis and treatment of such injuries and "the history of the recent six weeks" mentioned by Mrs. Saul in her notes and by Mrs. Dick in her notes. Those notes eventually were transcribed and form part of the Society's records of Kim's case.

Mrs. Saul regarded her involvement in the case to have been completed by her oral report to Mrs. Harvey and the preparation, before or after that report, of her notes as to the occurrence and the delivery of those notes to Mrs. Harvey.

Mrs. Dick testified that she had assigned Mrs. Saul and Mrs. Hoad to accompany Police Constable Gander when he reported to her that the Sarnia Police Force had received an anonymous call the previous evening to the effect that Kim had multiple bruises over the face and neck. Police Constable Gander had also told her that over the preceding six weeks Kim had had a broken arm on one occasion and a black eye on another occasion when admitted to hospital.

Mrs. Dick said that on her return to the Society Mrs. Saul did briefly mention her very strong concerns about the matter and her probable recommendation to Mrs. Harvey that a longer term social worker be assigned for ongoing involvement with the Popen family.

Mrs. Dick continued her testimony to say that later, on June 17 or June 18, 1975, Mrs. Harvey said she would be assigning the case to Mr. Carter, a long term worker. Mrs. Dick said that it was Mrs. Harvey's responsibility to make that decision and assignment. Mrs. Dick said this information was given to her by Mrs. Harvey officially so that the Society's records would be prepared to show that responsibility for the case had been transferred from the short term team, Mrs. Dick's team, to the long term team of which Mr. Carter was a member.

Mrs. Dick agreed that no file on the case was opened in the Society on June 17, 1975. She said that at that time the Society was not opening files "that immediately unless a child had been brought into care" and that there was otherwise a twenty-one day period for investigation and determination as to whether a file should be opened. I gathered that the decision that a file would be opened would be made if, in consultation with the supervisor, the social worker assigned to the case decided that it required ongoing service by the Society.

At the time of Police Constable Gander's discussion with her Mrs. Dick made some notes of the conversation. She said the notes were made on an intake slip, "a little slip of paper" to use her words, and would have formed the basis for the paragraph of the record of the Family Services Department of the Society under date June 17, 1975 appearing opposite her initial and those of the typist, "AD/mh." She said that once the typewritten record was prepared the handwritten intake slip would be destroyed.

Mrs. Dick testified that any handwritten notes of events prior to the opening of the file would be kept

> "presumably with the worker who would be looking after the case."

That Mrs. Dick could only make that presumption indicates to me that the Society had no clear policy and procedure on the matter. If there had been any policy or procedure Mrs. Dick should have known it. If there was such a policy or procedure I think she would have known it. Mrs. Dick felt that Mrs. Saul would have given her handwritten notes to Mrs. Harvey when Mrs. Harvey was assigning the case to the ongoing team.

Mrs. Harvey testified that "it was a standing procedure" that two of the Society's personnel would respond immediately to any report of child abuse.

The written policies and procedures of the Society filed as two exhibits upon the Inquiry do not mention any such so called "standing procedure". Each of the documents is composed of only two pages and a small fraction of a third page. One of the documents is entitled "Policies for Child Care Services." The other is entitled "Policies in regard to Family Services". Neither document makes any mention of child abuse or any similar term. So that readers of this Report may for themselves assess the adequacy of those policies they are set forth in full in Schedules 2-L and 2-M to the Report.

Mrs. Harvey's recollection was that Mrs. Saul had brought Kim's case to her attention at a meeting of the long-term team of the Society's workers on June 17, 1975 and the case was discussed at that meeting. No minutes of such meeting were available to support that evidence. Mrs. Saul did not mention any such team meeting. Mrs. Dick did not mention it. I think Mrs. Harvey is in error in her recollection.

Mrs. Harvey testified that on receiving the information from Mrs. Saul, she instructed Mrs. Saul "to prepare the material immediately." Mrs. Harvey said that instruction was followed by Mrs. Saul completing what Mrs. Harvey said was an "intake slip." I understand that to be the same document which Mrs. Saul described, merely her handwritten notes. Mrs. Harvey agreed that those notes would have been destroyed. She said that would have been in September, 1975 when the file was formally opened and a typewritten record for the file was begun. Mrs. Harvey described the file as being entitled "Record of Inquiry."

That file is composed of a face sheet which records Kim's name and some particulars of her and her family. It is a printed four page form with handwriting thereon and in the upper left corner the date thereof is indicated as "D 31 M8 975," which I take to be August 31, 1975. Clearly some material has been added at a later date for there is reference to the birth of Kim's brother on July 6, 1976. It indicates that the matter was referred to the Society by medical and police personnel.

Attached to that Record of Inquiry are fourteen pages, substantially all typewritten, but with some handwritten notations.

In respect of the period I am considering in this Chapter of the Report, April 3 to August 31, 1975, there are several entries.

There is an item under date of June 17, 1975 apparently typed on the basis of notes or information provided to the typist, but originally prepared by Mrs. Dick. There is no satisfactory evidence as to how or when or by whom the material was given to the typist or when it was typed or as to where and with whom Mrs. Dick's notes reposed from June 17, 1975 until transcribed. The typing occurred after August 31, 1975.

This item records Police Constable Gander's visit to the Society and his reference to there having been an anonymous call to the Sarnia Police Force. It contains the following sentence:

> "Allegedly over the last six weeks the infant has had a broken arm on one occasion and on another a black eye when admitted to hospital for other causes."

Thus clearly, on June 17, 1975, the Society was aware not only of the call to the Sarnia Police Force on June 16, 1975, but also of allegations of occurrences during the preceding six weeks. These allegations surely must have been of concern to the Society as it considered its position in relation to Kim, but there was no evidence that during the period covered by this Chapter of the Report any effort was made by the Society to inquire into the allegations.

There is a second item under date June 17, 1975 apparently typed on the basis of notes or information presented to the typist, but originally prepared by Mrs. Saul. Again there is no satisfactory evidence as to how or when or by whom the material was given to the typist or when it was typed or where and with whom Mrs. Saul's notes reposed from June 17, 1975 until transcribed after August 31, 1975.

This item, as noted above, records the visit of Mrs. Saul, Mrs. Hoad and Police Constable Gander to examine Kim on June 17, 1975 and Mrs. Saul's observations, including her observations of the relationship between Jennifer Popen and Annals Popen. It contains Mrs. Saul's opinion of Jennifer Popen and her belief that close supervision was required.

Thus the Society had an assessment, however preliminary or tentative, by Mrs. Saul of Jennifer Popen and again there was reference to "the history of the recent six weeks."

The item also contains reference to Dr. Jumean as the family physician. Thus I am satisfied that, on June 17, 1975, the Society was aware that Dr. Jumean could be a source of information as to Kim's care and well-being. But no effort was made to inquire of him as to Kim's medical history.

Clearly the Society did nothing with reference to Kim from June 17, 1975 until August 31, 1975.

Mrs. Saul testified that her conversation with Mrs. Harvey, on June 17, 1975, was the last contact she remembered with the case other than perhaps to respond to a telephone call from the Sarnia Police Force and to advise the caller she was no longer involved in the case which had been transferred to Mr. Carter. The Society records contain no notation of any such telephone call.

Police Constable Gander testified, and the Sarnia Police Force's Investigation Report supports him in part, that on July 2, 1975 he telephoned Mrs. Saul because it had been arranged that she would advise the Sarnia Police Force of the results of the Society's involvement. No such advice had been received by the Sarnia Police Force; so he telephoned Mrs. Saul for information. He said Mrs. Saul advised him Kim's case had been assigned to Mr. Carter, and he felt that she had added that Mr. Carter had not yet been able to see Mr. and Mrs. Popen.

Mr. Carter testified that Police Constable Gander had been in the Society's offices on another matter on August 29, 1975, but spoke of Kim's case at the time.

For this Mr. Carter seemingly relied upon the fact that there was a paragraph to that effect in the Society's typewritten notes.

With all respect to Mr. Carter and the Society, that is indeed a slim reed upon which to rely, it being evident, in part even on the specific evidence of Mr. Carter himself, that sometimes the typing of the record was done a long time after the event. It is equally evident that sometimes the typewritten version was not wholly accurate and the original author of any note or "little slip of paper" used as a foundation for the typing did not always compare the typewritten version with his or her handwritten notes to confirm the accuracy of transcription. Indeed until this Inquiry was convened, Mrs. Saul had not seen the typewritten transcript of her notes. She assumed Mrs. Harvey would have checked that transcript against the original notes.

Mr. Carter, in reviewing the typewritten record, said that at least two items he had himself prepared for inclusion therein were missing. Apparently they were not transcribed. He said that another item which was transcribed, that relating to his alleged conversation with Police Constable Gander on August 29, 1975, was in error in that it stated:

> "we [the Society] should hold off."

Mr. Carter testified that it would be more accurate for the transcript to read

> "He [Police Constable Gander] didn't say not to interfere -- we should ask their help."

Mr. Carter testified that another item was not transcribed in the sequence in which he recalled having dictated it.

The entire transcription under date of August 29, 1975 is as follows:

> "H.R.C. had talked with Detective Gander, City Police, re a home visit and was told that the current situation with police and parents was most 'volatile' and we should hold off. He would send an occurrence report and also keep the home under surveillance and report back. No report was received."

I note that, unlike the item acknowledged by Mr. Carter to have been written by him, this item does not bear his initials or those of the typist in the margin. As well the style of writing is different. This item opens with the initials "H.R.C." in the body of the item. That indicates to me that someone other than Mr. Carter wrote it. In the item written by Mr. Carter, the lengthy dictation from September 1, 1975 to February 29, 1976, his initials appear at least twice with those of the typist in the margin, but do not appear in the body of the item. The item written by Mr. Carter is written in the first person singular when referring to the author. The item under date of August 29, 1975 is not so written.

The last four words of the item, "no report was received," satisfy me that the item was written after August 29, 1975.

I find that Mr. Carter neither wrote nor dictated the item under date of August 29, 1975 which the Society's records attribute to him. It is preceded by an item dated June 19, 1975 with Mrs. Harvey's initials in the margin. I believe that Mrs. Harvey wrote the item under date of August 29, 1975. I am supported in that by the reference in the item to concern that Kim might be removed to Jamaica. Mrs. Saul testified she may have mentioned that to Mrs. Harvey on June 17, 1975.

Further Mrs. Saul testified that she had not spoken to Mr. Carter about Kim's case. I am also supported by Mrs. Saul's evidence that no one from the Sarnia Police Force had suggested to her that she delay any visit to the Popen home. Both she and Police Constable Gander in testimony upon the Inquiry referred to her intent to visit the home within a week of June 17, 1975. The Sarnia Police Force's Investigation Report contains no reference to any occurrence between June 17 and August 31, 1975 apart from Police Constable Gander's telephone conversation with Mrs. Saul on July 2, 1975. I heard no evidence as to how Mr. Carter might have obtained information as to Jennifer Popen's possible flight to Jamaica with Kim.

There was no factual basis for that item dated August 29, 1975.

No one from the Sarnia Police Force who testified had any recollection of any such conversation with Mr. Carter on August 29, 1975 and the Police Investigation Report contains no notation of it. Police Constable Gander specifically denied any involvement with the case after June 17, 1975, apart from his telephone call to Mrs. Saul on July 2, 1975.

Police Constable Gander specifically denied that he had given any assurance to the Society or made any statement to the effect that the Sarnia Police Force would keep the Popen home under surveillance. I should mention that any such assurance, even if given, would seem to me to be of little value to the Society in relation to its performance of its duties and certainly would not be cause for the Society who, to my mind clearly had primary responsibility in the case, to refrain from performing its function which was to ensure that Kim was protected.

Various witnesses in the employ of the Society appeared to stress that Police Constable Gander had stated on June 17, 1975 that the telephone call to the Sarnia Police Force on June 16, 1975 was "anonymous." They said it would have been helpful to the Society had they known that the call had been from a medical doctor. Be that as it may, Mrs. Saul testified that that error or omission by Police Constable Gander or the lack of information supplied to the Society did not affect her opinion, because of "the nature of what [she] saw that day [June 17, 1975]." At the same time the Society was aware of Dr. Jumean's role as the Popen's family physician.

I largely discount and disregard the protestations of those of the Society's personnel who suggested that the handling of Kim's case in June, 1975 might have been different if the Sarnia Police Force had indicated to the Society that the complaint came from a medical doctor rather than from an anonymous source.

In my view the Society were not in any meaningful way misled in June, 1975. They just did nothing after June 17, 1975 until August 31, 1975 and then only because of another occurrence.

Mrs. Saul expressed a similarly critical opinion with reference to the fact that on June 17, 1975, the Society had not received copies of or information about medical and hospital records and reports concerning prior injuries to or treatment and hospitalization of Kim. An example of those would be Dr. Singh's report of March 22, 1975 wherein he expressed strong suspicion that Kim was a victim of abuse and mentioned the battered child syndrome.

Mrs. Saul felt that all of that may have been of assistance to her on June 17, 1975 particularly from the point of view of alerting her to what she should be looking for and the questions she should be asking. She felt they would have been of particular assistance to the worker to whom the case would be assigned for the continuing investigation by and involvement of the Society.

I share the thought inherent in Mrs. Saul's testimony. That thought is that the Society should have at once investigated the allegations of prior incidents of injury and possible abuse. It was a simple chore left undone by the Society. The Society was aware that the allegations related to "six weeks" preceding June 17, 1975 and to Kim's prior admission to hospital.

I have already commented upon the failure of those involved with Kim's hospitalization in March and April, 1975 to make any report pursuant to section 41 of The Child Welfare Act. That failure does not absolve the Society from liability for its failure from June 17, 1975 onward to seek out that information from them. It should not have been a difficult task. Dr. Jumean was known to them as the Popens' family doctor. There are only two public hospitals in Sarnia.

If Mrs. Saul in her testimony was suggesting that the Society was not expected to investigate to obtain information, I regret the suggestion. The personnel of the Society were not entitled to assume that others would obtain and furnish to the Society all the information needed by the Society to manage Kim's case.

Mrs. Saul felt that, even with all of that information about prior events and injuries to Kim, her observations of Kim's condition on June 17, 1975 would not have justified her apprehending Kim at that time as a child in need of protection under The Child Welfare Act. That was so even though she did have great concern that Kim may have been abused and did feel she might be abused in the future.

Mrs. Saul testified that after her report to Mrs. Harvey on June 17, 1975, she had no further connection with Kim's case and she made no inquiry as to its progress. In the light of her real and justified concern for Kim's welfare on June 17, 1975 I am surprised she made no such inquiry. I do not suggest there was any obligation upon her to do so. Even she acknowledged it would have been advisable for her to have had a discussion with the long-term worker, Mr. Carter as she understood, in which she could have expressed the details of her concern. She felt, however, that the obligation, if any, to arrange such a discussion would lie on the long-term worker who could seek information from her in clarification or enlargement of her recording.

In retrospect Mrs. Saul acknowledged that, had she approached Mr. Carter, the failure of the Society and Mrs. Harvey to open the file and to assign ongoing responsibility for management of the case would have been revealed.

Thus it is apparent to me that, from June 17 until August 31, 1975, the Society were aware of incidents in Kim's life which should have been investigated, but nothing was done.

It is clear to me that the Society was lacking in appropriate procedures. It is inexcusable that a matter such as this, regarded even by the Society's personnel as one requiring serious, urgent and long-term investigation and involvement by the Society, should be permitted to remain unrecorded and unattended for two and one half months. I am satisfied that that came about largely, if not solely, because of the absence of appropriate procedures and systems within the Society.

The methods employed by the Society on June 17, 1975 and later to purport to record the events of that day result in the Society's records in this matter being woefully lacking in credibility. If one were to read those records without having heard the testimony given upon the Inquiry one would have a picture of those events which was far removed from the facts.

Clearly the typewritten transcript was prepared no earlier than September, 1975. The handwritten notes of Mrs. Dick and Mrs. Saul on which the typewritten transcript is based are not available to enable any verification of the accuracy of transcription. Neither Mrs. Dick nor Mrs. Saul compared the typewritten record purporting to be a copy of her handwritten notes with her own notes to ascertain the accuracy of transcription. Mrs. Saul had not seen the typewritten record until she read it in preparation for her testimony upon this Inquiry. The typewritten transcript was not manually initialled to indicate that the person originally creating the entry had read and approved the transcript.

There is no clear evidence as to just where those handwritten notes may have been from June 17, 1975 until the typewritten versions were prepared. It seems likely that at least Mrs. Saul's notes were left with Mrs. Harvey. Perhaps Mrs. Dick's notes too were given to Mrs. Harvey, but Mrs. Harvey seemed to deny that and speculated that Mrs. Dick may have assembled all of the material and given it to the typist in September. That uncertainty is a demonstration of the lack of system or control of records within the Society.

Mrs. Harvey in her testimony spoke of a card index file She said such a card with reference to Kim should have been prepared in June, 1975. Clearly it was not. Indeed, if my memory of the evidence is correct, the original of such card which was presumably prepared when the file was opened in September, 1975 could not be located, but Mr. Carter had a copy which had been given to him when the case was assigned to him in September, 1975.

Mrs. Harvey suggested that Mrs. Saul's notes or the contents of them would have been discussed at a meeting of certain Society workers on June 17, 1975. As indicated earlier I am not prepared to accept that suggestion. No minutes of any meeting made available to the Inquiry support it.

Mrs. Harvey testified that, for some unexplained reason on August 29, 1975, she checked to see what was happening to the case, that she called Mr. Carter to her office and told him to call the Sarnia Police Force to inquire of them as to the state of the case. She said Mr. Carter had reported back to her that the police regarded the matter as most volatile and requested that the Society not visit the Popen home and the police would forward a report.

When asked if he had any discussion with Mrs. Harvey immediately subsequent to the conversation which he said he had had with Police Constable Gander on August 29, 1975 Mr. Carter's response was:

> "If I did it may have been a passing comment which often occurs about many cases."

Thus Mr. Carter's evidence does not support Mrs. Harvey's evidence to the effect that, on August 29, 1975, the initiative for whatever, if anything, happened on that day came from her.

I am not prepared to find that anything with reference to Kim was discussed or done by any of the Society's personnel, specifically Mrs. Harvey and Mr. Carter, on August 29, 1975 nor am I prepared to accept Mrs. Harvey's testimony that on August 29, 1975 she dictated the paragraphs of the recording bearing that date and the date June 19, 1975. Mrs. Harvey said the final paragraph dated August 31, 1975, which was

> "Case opened to H.R. Carter"

was so dated for statistical and thus for financial reasons.

I am prepared to accept that she dictated those paragraphs. But she did not do so on August 29, 1975. She did so after August 31, 1975.

I note particularly that the following paragraph dealing with various events, including August 31, 1975, also originally purported to bear date August 29, 1975. Mrs. Harvey called it a "typist error." I do not think so. Mrs. Harvey acknowledged she had corrected that in ink to August 31, 1975 and also made a note for an insertion of that point from another page.

As Mrs. Harvey said in testimony: "It's such a mess." I agree.

Regretfully Mrs. Harvey's memory, which put everything in as favourable a light as possible for her, did not help to clear up the "mess."

I am satisfied that on June 17, 1975 Mrs. Harvey assumed personal responsibility for the handling of documentation of this case. She said she knew it would require a longer period of time than the short term workers would give, which was three months. She then intended to assign it to Mr. Carter for ongoing investigation and service on behalf of the Society. That assignment was not made and Mrs. Harvey had no explanation for her failure to assign the case to Mr. Carter.

Mrs. Harvey gave no explanation as to what had prompted her on August 29, 1975 to speak to Mr. Carter. She sought to explain the interval from June 17, 1975 to August 29, 1975, by saying that it was not unusual for Mr. Carter to work on his own without reporting to her and that the summer months and vacations interfered with regular staff meetings and reports. She also indicated that the immediate assignment of the case to the long-term worker, Mr. Carter, perhaps resulted in the oversight in preparation of the intake work documentation. She nonetheless testified that it was not unusual for cases to be transferred so quickly. She had no explanation for the case coming to her attention or mind on August 29, 1975.

To my mind the supposed resurgence of the case in the Society on Friday, August 29, 1975, just a day or two before Kim was admitted to hospital, is too great a coincidence to be credible. I do not believe it.

Even Mrs. Harvey and Mr. Carter, who testified as to that resurgence, do not agree as to how it came about. Mrs. Harvey said she initiated it and spoke to Mr. Carter most forcefully to get on with the case. Mr. Carter testified it came about casually and incidentally to another matter he discussed with a police officer that day in his office.

Mr. Carter gave no explanation as to why he had concerned himself to make any note of that incidental and casual conversation. He had then, to his knowledge, no involvement with the case. I merely wonder as to of what he thought his notes would become part. Mr. Carter has no recollection of a specific conversation at about that time with Mrs. Harvey relative to his casual discussion with the police officer. I am sure that if Mrs. Harvey had spoken to him, as forcefully as she testified she had, he would have remembered.

The suggestion that Mr. Carter made notes for the Society's file on August 29, 1975 is not credible. At that time the entire file was composed only of the handwritten notes of Mrs. Dick and Mrs. Saul. The location of those notes is not known. Only those two workers and Mrs. Harvey and Mrs. Hoad had had any involvement in the case. Mr. Carter could not have found in the Society any record of the case even if he had looked for it. There was no evidence that he had looked. In addition, on his own evidence, he had, in May or June, 1975, been approached by Mrs. Hewitt in the mall about Kim. But he made no note of that discussion nor did he feel any need to make any inquiries within the Society about the matter. I am left to wonder why he says his attitude and actions were different on August 29, 1975 from what they were when Mrs. Hewitt spoke to him earlier. Clearly nothing had happened within the Society to cause him to change his attitude toward the case and his actions.

Mr. Carter acknowledged that the material transcribed in typewritten form is not as he would have written his note. The typewritten material under date August 29, 1975 is prepared in the third person, "H.R.C. had talked..." Also, in his view, it should have noted that Police Constable Gander spoke to him rather than that he spoke with Police Constable Gander. That may, at first blush, appear to be an exercise in semantics, but I think Mr. Carter was indicating that the initiative for the conversation lay with Police Constable Gander, that Mr. Carter had not sought out Police Constable Gander to elicit any information and that any conversation or discussion was quite casual in nature.

I note as well that the typewritten material refers to a report to be furnished by the Sarnia Police Force and concludes

> "No report was received."

It seems obvious therefor that the material from which the typewritten transcript was made was prepared at some time after, perhaps a long time after August 29, 1975 when the promise to deliver such a report was allegedly made.

In fairness to Mr. Carter, while he professes to remember the conversation he allegedly had with Police Constable Gander, he relies on a personal diary and the typewritten record to establish the date of that conversation as being August 29, 1975. His original notes too have been destroyed. I have already commented upon the fallibility of those records. Even Mr. Carter's evidence demonstrates that fallibility.

I cannot and do not accept the evidence of Mrs. Harvey and Mr. Carter as to the resurgence of interest in Kim's case on August 29, 1975. I am not prepared to find that anything relative to Kim occurred within the Society on August 29, 1975.

Even prior to Kim's birth The Lambton Health Unit had been involved with her and her family. In August, 1974 Mrs. Kuly of that Unit had counselled Jennifer Popen on nutrition and general pre-natal care. This was after another nurse from The Lambton Health Unit had been sent to visit Jennifer Popen in hospital because of the report of her illness with an intestinal parasitic infestation during her pregnancy with Kim.

In February, 1975, Mrs. Kuly visited the Popen home in connection with Kim's birth and general care following the recommendation of another nurse from The Lambton Health Unit who had visited Jennifer Popen while she was in the hospital for Kim's birth.

Dr. Duncan, in the absence of any record of the reason for the recommendation that a nurse from The Lambton Health Unit visit the Popen home, opined that the recommendation was made because Jennifer Popen was such a young mother.

Dr. Duncan testified that on June 16, 1975, Dr. Jumean telephoned her to report the possibility of Kim having been abused. She said Dr. Jumean told her he had just examined Kim in his office and she had lacerations of the lip and multiple bruising. He told Dr. Duncan he had notified the Sarnia Police Force. His purpose in calling The Lambton Health Unit was that they be aware of the matter and perhaps visit the home. Dr. Duncan testified that Dr. Jumean informed her that Jennifer Popen abused Kim in a chain reaction when Annals Popen beat Jennifer Popen.

Dr. Duncan felt The Lambton Health Unit's role was one of education of the public and not one of supervision. She said if The Lambton Health Unit felt supervision was required for the welfare of the child The Lambton Health Unit would ask the Society to provide supervision. She testified that one of The Lambton Health Unit's goals was to establish a good relationship with those whom they visited. Another immediate goal would be to see Kim if the chance arose and perhaps to have the parents discuss the problem.

Mrs. Kuly said that on June 23, 1975, she visited the Popen home and both parents denied having abused Kim. The explanation given by them for the earlier broken arm was that Kim had fallen from a chair when straps were loosened. The explanation given by Jennifer Popen for Dr. Jumean's report was that the matter was misreported to him by a relative who wanted Kim.

On June 23, 1975, Mrs. Kuly had only a brief look at Kim while she was sleeping. It was just enough to enable Mrs. Kuly to see Kim's face and head. She saw no sign of injury. She made no insistent effort to see Kim. It was the opinion of Dr. Duncan, her superior, that The Lambton Health Unit's personnel could not examine a child without the consent of the parents and indeed could not even enter the home against the parents' wishes.

Mrs. Kuly said she had made a very loose arrangement with the Society to report to them if she observed anything of significance. She felt she had made no such observation; so she made no report to the Society on her visit.

It seems that Mrs. Kuly was informed by Jennifer Popen on June 23, 1975 that one of the Society's workers was visiting the home regularly. If so, the information was wrong. On June 17, 1975 Mrs. Saul had spoken of an intent to visit, but by June 23, 1975 there had been no visit by the Society's personnel except that made on June 17, 1975.

Mrs. Betty Hewitt testified that in June, July or August 1975, she saw Kim with Jennifer Popen at a shopping mall. Mrs. Hewitt recognized Jennifer Popen from her prior attendances at St. Joseph's Hospital with Kim. She said that, out of curiosity and friendliness, she approached them and observed that Kim had black eyes and bruising around the face, but Jennifer Popen walked away without any conversation.

Mrs. Hewitt testified that she commented on that to Dr. Thorp within a day or two. She said Dr. Thorp agreed that he would speak to Dr. Jumean. Dr. Thorp's evidence was somewhat different. He said he had agreed to look into the matter if Dr. Jumean indicated to Mrs. Hewitt that he would not inquire into it. He said he was told by Mrs. Hewitt that she had spoken to Dr. Jumean and then was told by Dr. Jumean that Dr. Jumean had gone to the Popen home, but had been refused admission. Dr. Thorp said that during that conversation with Dr. Jumean he expressed his suspicions that the March 22, 1975 hospitalization of Kim involved abuse.

Dr. Jumean did not recollect any such conversation with Dr. Thorp, but denied that he had ever tried to go to the Popen home and been refused admission.

Dr. Jumean testified that as a result of his having seen Kim in June 1975 he was concerned and telephoned Jennifer Popen and asked her to come to his office. To use his words he wanted

> "to find out what's going on."

He said that Jennifer Popen attended at his office three days after he had seen Kim with Fay Popen. He said he could not remember examining Kim's file before that visit and could not remember having then any prior indication of suspicion by anyone that Kim was the victim of abuse. His office records indicate a visit on June 19, 1975, but neither they nor his testimony upon the Inquiry are helpful in determining the nature of that visit or his observations at that time. It is not even clear that he saw Kim on June 19, 1975.

One is left to wonder why Dr. Jumean would not then have carefully reviewed Kim's file, and remember doing it, if he were truly concerned "to find out what's going on." There was material there to assist him in any such endeavour.

Thus again it seems that there were persons, Dr. Thorp, Dr. Jumean, Mrs. Hewitt and Mrs. Fay Popen, who apparently had ample basis on which to justify a report to a children's aid society or Crown attorney under section 41 of The Child Welfare Act before August 31, 1975. Again it seems to me that such failure, if failure it be, by those persons had only a minimal effect upon the development of the tragic story of Kim's life and death.

One may speculate as to what might have happened had any of those persons made such a report directly to a children's aid society or Crown attorney. That they did not possibly contributed to the forming of the second arc of the circle of tragedy which eventually ringed Kim and led to her death.

In fairness to Mrs. Hewitt, Mrs. Fay Popen and Dr. Thorp in this context, each of them reported the information to Dr. Jumean the family doctor. Such report was made directly to Dr. Jumean in the case of Mrs. Popen and Dr. Thorp and indirectly to him in the case of Mrs. Hewitt who had reported to Dr. Thorp. Thus any failure to report, if indeed there was such failure, is purely a technical rather than a moral failure.

But far and away more serious was the failure of the Society, from June 17 to August 31, 1975, to do more than send Mrs. Saul and Mrs. Hoad with Police Constable Gander to investigate the report which was transmitted to the Society by the Sarnia Police Force. That the Society failed to undertake any further investigation, even though Mrs. Harvey agreed with Mrs. Saul that the case would require long and intensive effort by the Society in co-operation with other agencies, such as The Lambton Health Unit, was probably one of the two major errors of oversight or judgement which resulted in Kim's death.

Thus was formed the third arc, and the first of two major arcs, of the circle of tragedy which eventually ringed Kim and led to her death.

Chapter VII

Significant Events in Kim's Life from August 31 to September 5, 1975

On Sunday, August 31, 1975, shortly after midnight, Kim was admitted to St. Joseph's Hospital.

In her testimony upon the Inquiry, Jennifer Popen acknowledged that she had caused the injuries to Kim which are discussed in this section. Again Jennifer Popen stated that Kim had fallen from her crib,

> "but the arm wasn't caused by falling from the crib, but she did fell."

This admission related to the rib fractures as well as the more recent injuries. She said the broken arm came about as a result of something she had deliberately and knowingly done, but, in almost the same breath, she asserted that she had been truthful in her testimony in the Provincial Court (Family Division) of the County of Lambton, which hereafter in this Chapter shall be called simply the "Provincial Court", that Kim had fallen from her crib. That was in answer to Judge Nighswander's query about the broken arm and its cause. Upon the Inquiry, she said that was truthful evidence but

> "I just didn't tell him what else had happened...I didn't get into detail, so I wouldn't call that lying because I didn't get into it."

She was typically evasive when asked if she had lied in response to another question by Judge Nighswander in the Provincial Court. She had told Judge Nighswander she had not seen certain injuries happen, but, in her testimony upon the Inquiry, she acknowledged she had seen them happen. When asked about the evident discrepancy and whether she had lied to Judge Nighswander she responded merely

> "Well, I'm not sure I did there, because I didn't remember."

But Jennifer Popen did maintain that Annals Popen had hit Kim with a slipper on one occasion as described in the proceeding in the Provincial Court subsequent to discovery of Kim's injuries on August 31, 1975.

I should add that Jennifer Popen acknowledged that she misled Annals Popen as to the cause of various injuries which Kim had suffered to that time and that Annals Popen had believed her explanations for the injuries.

Jennifer Popen acknowledged that until her ultimate plea of guilty to the charge of manslaughter she told false "stories" to a number of people, including doctors, as to how Kim's injuries had been caused. All of the "stories" showed Jennifer Popen to be blameless.

On August 31, 1975 Kim was examined by Dr. Thorp who again, as on March 22, 1975, was covering for Dr. Jumean and was present in the Hospital's Emergency Department. Dr. Thorp testified that Jennifer Popen on presenting Kim at the hospital reported that Kim had fallen from her crib during the morning of August 30, 1975 and later cried with pain, which resulted in Jennifer Popen bringing her to the hospital. He said Jennifer Popen further related that Kim had fallen from the same crib two or three days earlier and had injured her right elbow. He said Jennifer Popen also mentioned the injury leading to Kim's hospitalization on March 22, 1975.

Dr. Thorp said that when asked why she had not brought Kim to hospital earlier Jennifer Popen had said she had not felt Kim was injured until she began to cry.

Dr. Thorp found some bruising and hardening in the area of Kim's left elbow. At that time, perhaps because of lighting and other conditions, he found no bruises on her head or elsewhere on her body. On later examination he did see some bruises and a healing sore or scab in the middle of her upper lip.

Dr. Thorp made a diagnosis of right otitis media, infection of the middle ear, in addition to the injuries.

Dr. Thorp decided to admit Kim to hospital and was concerned about the possibility of child abuse. He determined to bring his concern to Dr. Jumean's attention again. In using the word "again" Dr. Thorp said specifically he had spoken to Dr. Jumean about the incident of Mrs. Hewitt's observation of Kim with black eyes in the shopping mall in the summer of 1975, and at the same time he had spoken about the earlier fracture of the left humerus in March, 1975.

Kim was X-rayed in the morning of August 31, 1975 and there was evidence of a fracture of the left elbow. Dr. McCrudden described it as a supercondylar fracture, that is a fracture of the lower end of the humerus within the elbow joint. He said the same X-ray demonstrated the healing of the original mid-shaft fracture of the same bone which was quite solid. That is the injury of March 22, 1975.

Upon seeing the results of the X-rays, Dr. Thorp arranged for Dr. Singh to examine Kim. Dr. Singh's examination revealed slight swelling and bruising of the left and right elbow region and slight bruises on the lower end of the tibia and fibula on both sides of the ankles. Both ankles were swollen, tender and bruised. There was a slight bruise over the left cheek. The left upper lip was slightly cracked and bleeding.

Dr. Singh said there was no tenderness or swelling or bruising of the left arm apparent to him during his physical examination of Kim, but X-rays revealed a fracture of the metaphysis of the left lower humerus.

Dr. Singh testified that further X-rays revealed fractures of the left 8th and 9th ribs in the mid-axillary line. He had not discovered that injury during his clinical examination of Kim and Jennifer Popen had not reported it to him. He said that on receiving the X-ray report he examined Kim again and found those ribs to be slightly swollen, but not tender. That indicated to him that they may have been old fractures which had healed.

Dr. Singh was asked for his opinion as to how the various injuries noted on August 31 and September 1, 1975 might have been occasioned. In his opinion the bruising of the left cheek and the injury to the lip might have been caused by a fall or "externally by some other person or object." In his opinion "impact injury, or a strong violence or a strong force on the elbows (sic)" would have caused the fracture of the lower part of the left humerus. He said a fall from "a great height" might have caused the fracture, that is a fall from more than three or four feet. Dr. Singh opined that the lineal bruises on the ankles could be caused by someone grasping or holding the ankles tightly, that is with "a tremendous amount of pressure." Dr. Singh felt the fractures of the ribs could have been caused by a strong force or a fall, but his opinion was that no child of Kim's age could, of his or her own volition, have a fall to create such a fracture.

Dr. McCrudden testified that on September 1, 1975 several X-rays were taken. They were to be a long bone skeletal survey of Kim and a re-examination of the fracture of the left humerus. He said that coincidentally a portion of the left rib cage was demonstrated on the X-ray film. That portrayed healing fractures of the eighth and ninth ribs in the mid-axillary line, that is directly in the side. By reason of the amount of callus formation present Dr. McCrudden estimated that the fracture had occurred about three to four weeks earlier. As a result of that X-ray he had examined the chest X-ray performed on April 28, 1975 and found that it revealed no fracture of the ribs. Clearly whatever caused the fractures of the ribs occurred in July or early August. That may have been coincident with whatever event caused Kim's black eyes which Mrs. Hewitt saw in that shopping mall.

Again Mr. Khattab, the hospital social worker, was notified. He merely telephoned the Society and spoke with Mrs. Harvey on September 3, 1975. He advised her that Kim appeared to have been abused. He said Mrs. Harvey asked for something in writing. He said he had not been informed that the Society were already involved in the case; so he sent a brief, almost form letter to the Society dated September 4, 1975 indicating that Kim was to be released from hospital on September 5, 1975 and

> "may need some assistance after leaving hospital."

He enclosed a sheet which he said showed Kim's date of birth, information as to her admission to St. Joseph's Hospital on March 22, 1975 "with a fracture" and her admission again on April 22, 1975 "with black eyes plus" and her admission on August 31, 1975 "with fracture and bruises."

In that document, which is dated September 8, 1975, he wrote:

> "this case requires deep investigation which we are sure you will conduct."

He also recorded that Jennifer Popen appeared to be

> "very responsible but this is a matter the hospital doubts."

In his note he said:

> "It is reported to this hospital by an outside source that the father beats the mother and the latter beats the child."

From all of that it is clear that Mr. Khattab was not aware of the instruction from Mrs. Dick to the hospital on August 31, 1975 that Kim was to be released from hospital only to the care of the Society. Thus it would seem that Mr. Khattab's note to the Society was indeed a "form" letter and was not the result of any investigative or other effort by him.

He also said he enclosed "a copy of the physician's report". I do not know the identity of the physician whose report he purported to enclose.

Mr. Khattab testified that a copy of Dr. Singh's report on Kim's discharge from hospital on September 5, 1975 was forwarded to the Society. That evidence seems to be based on the notation on that discharge summary that a copy was forwarded to

"Mr. Carter, Children's Aid Society". That report was not dictated until September 5, 1975; so it would seem would not have have been enclosed with Mr. Khattab's letter which he said was mailed on September 4, 1975 and which he said was intended by him to be received by Mrs. Harvey. He made no mention of Mr. Carter.

Mr. Khattab in his evidence indicated that involvement in Kim's case was his first experience with child abuse. He said that he had come from a culture which never heard of child abuse. With all due respect to Mr. Khattab I find that incredible.

On the strength of Dr. Bates' testimony I am satisfied that abuse of children is a world-wide phenomenom. What constitutes abuse of children within a society is determined by that society. Each society may view and treat what it recognizes as the phenomenom in its own way and with varying success.

It may be that what we in Canada regard as abuse of children is not so regarded in the culture from which Mr. Khattab comes, but surely he, as one professing to be a social worker educated, in part, in Canada and as one employed as a social worker in Canada, must be aware of the standards and attitudes of Canada and Canadian society generally in relation to the care of children.

Be that as it may, Mr. Khattab, for whatever reasons, was unable in March, 1975 to believe that any parent could abuse a child. That seems to me to be a naive, wholly idealistic and unrealistic approach for anyone who professes to be a "social worker". He said the formal courses he had taken would, subject only to his completing a thesis, have entitled him to a degree of Doctor of Philosophy in social work. He said none of those courses touched on the battered child. That too is an incredible statement.

Mr. Khattab testified that when he began his service at St. Joseph's Hospital in December, 1974 he had no information and knew nothing about the battered child syndrome and, as it was not his "speciality", he chose not to look into it. Again that is an incredible statement of position or philosophy by one who held himself out to be a social worker.

When he was examined by the Inquiry's counsel Mr. Khattab seemed to me to waffle considerably. He said he was not advised in March, 1975 that Kim's was a case of "suspected child abuse." He said he chose to say that the case was referred to him "for child protection reason", but he did not explain what that meant to him or anyone else. I am satisfied it could mean only to protect the child from danger, neglect or abuse from whatever source.

The words "suspected child abuse" may not have been used in that juxtaposition, but had Mr. Khattab read the documents in Kim's file, particularly the request for consultation signed by Dr. Lota and Dr. Singh's handwritten and typewritten reports, he would have seen the symbols and words

> "? batter baby syndrome"

and

> "I would strongly suspect that the battered child syndrome is present."

Dr. Singh clearly indicated his suspicion that Kim required protection then to avoid further injury, including severe fractures. I do not know how anyone seeing those documents could not recognize that the doctors, especially Dr. Singh, were expressing a suspicion that Kim had been battered. Even in common usage a child who has been battered has been abused.

I should note that had Mr. Khattab been concerned as to the meaning of "battered baby syndrome" he needed to look no further than the Concise Oxford Dictionary. That work, under the word "batter", has the swung dash symbol followed by the letters and word "-ed baby" and the meaning given therefore is

> "with symptoms of repeated violence by adults."

Other dictionaries may not be as direct and apt, but would certainly give meanings to be ascribed to the word "batter" which would include the application of violence by striking.

Even if the reference of the matter to him was merely to achieve protection for Kim, Mr. Khattab did nothing effective to provide that protection.

As to what was expected of Mr. Khattab on August 31, 1975 and thereafter is summed up in Dr. Singh's summary prepared on September 5, 1975, when Kim was discharged from hospital. Dr. Singh wrote, after a description of Kim's injuries:

> "Pictures of these bruises were taken by the police. 3. Battered child Syndrome. Children's Aid Society and the police plus Mr. Khattab were informed about this and they are taking necessary procedures and investigations to find out the cause and the frequency of these fractures and bruises."

Again Mr. Khattab did not do as Dr. Singh expected. He did not take any procedure other than to telephone the Society and then to send them what I regard and classify as a form letter. He made no investigation to learn the cause and frequency of the fractures and bruises.

Even though in his statement to this Inquiry's investigator Mr. Khattab had said

> "I was informed of Kim POPEN and the suspected Battered Child Syndrome"

he seemed to me to continue to waffle in his testimony and say that the fact of child abuse could be determined only by examination by a qualified medical practitioner and that bruises on a child might come from many sources. He overlooks that doctors had expressed concern and suspicion which were recorded in Kim's file at the hospital. He overlooked that he had been asked to investigate the environmental and social status of the Popen family. He was expected to do only that and to report to doctors. He was not asked to make the definitive determination that Kim was a victim of child abuse.

I felt all of what I have written about was a shallow defensive stance taken by Mr. Khattab to minimize his own responsibility. Clearly a social worker is not to be expected to make any medical diagnosis or to express any opinion as to cause of any injury or any similar opinion that only a medical practitioner might be expected to make or express. Mr. Khattab was not asked to do any of that. He was asked merely to investigate the Popen family and household in relation to the care which Kim was receiving.

Mr. Khattab did acknowledge, in retrospect, that Jennifer Popen had "fooled" him and that if the situation which arose in March, 1975 were to arise again he Sould contact the Society at once.

As I have mentioned in Chapter V, Mr. Khattab went on to indicate some concern that he might have been sued in March, 1975 had he informed the Society of any suspicion of child abuse which he was "not sure of"; so he chose not to inform the Society "unless [he had] evidence." He denied that he had noted in Dr. Singh's report in March, 1975 any reference to the possibility of "battered child syndrome," although he said he had read the hospital charts on Kim. Mr. Khattab went on to say that, while his report to the Society on September 4, 1975 referred to Kim having been admitted to hospital on April 22, 1975, with black eyes, that was based solely on information given to him by Mrs. Mitchell, head nurse and was not accurate. I am left to wonder what he did read in March, 1975.

Mr. Khattab testified that he had not spoken to Jennifer Popen before reporting to the Society on September 3 and 4, 1975 because he decided he would not be fooled again. He testified that the mere fact that Kim had been admitted to hospital a second time was enough to warrant his reporting the matter to the Society.

It was Kim's second admission with a fracture of a bone, but it was her third admission to hospital. I doubt that Mr. Khattab's thought process was such as he suggested.

Mr. Khattab seems to have gone from a position of complete trust and naivete to one of complete incredulity and disbelief that a child might be admitted to hospital on two or more occasions for treatment of injuries suffered otherwise than from abuse. In my view neither extreme position is correct and proper.

The doctors directed, by order on Kim's chart, that she was not to be released from hospital unless the doctor was called and the mother, Jennifer Popen, was not to be allowed to sign Kim out without notifying the doctor.

Mrs. Hewitt was Acting Head Nurse when Jennifer Popen came to St. Joseph's Hospital at about 2:10 o'clock in the afternoon of August 31, 1975 and stated her intention to take Kim home. Mrs. Hewitt testified that all nurses had been instructed to be alert to any visitors to Kim. Jennifer Popen did not try to remove Kim surreptitiously, but announced to Mrs. Hewitt her intent to take Kim home. Mrs. Hewitt objected on the basis that all tests had not been completed, but Jennifer Popen was insistent and stated that there was nothing wrong with Kim. The nursing staff arranged to keep Kim hidden from Jennifer Popen and in the meantime sought to reach doctors and supervisors to ascertain the legal position of the hospital insofar as it related to Kim's remaining in hospital.

As a result Dr. Thorp and Dr. Singh responded and telephone calls were placed to the Sarnia Police Force and the Society. Mrs. Dick responded on behalf of the Society and Police Constables Kennedy, Wyville and Turner on behalf of the Sarnia Police Force.

Police Constable Edward J. Kennedy was the first police officer to arrive. He saw Kim and described her as having been "badly battered" as shown in the photographs later taken by Police Constable Turner. He said that in his opinion

> "...it wasn't an accident. Something deliberate had happened to that child...."

He based that opinion on the variety of injuries on various parts of Kim's body.

In the light of Mr. Khattab's professed difficulty with the words "child abuse" and "battered baby" Police Constable Kennedy's use of the adjective "battered" is significant to show that the expressions are not esoteric.

Police Constable Kennedy was present when Police Constable Wyville interviewed Jennifer Popen. He described Jennifer Popen as being very solemn and hostile. He said she kept saying that Kim was continuously falling from her crib.

Police Constable Wyville was the next to arrive in response to the telephone calls from the hospital. He arrived at the hospital about 3:10 in the afternoon. He said that Mrs. Hewitt told him that doctors felt Kim was a battered child. He said she expressed concern that the parents would remove Kim from hospital against her wishes. He spoke with Dr. Thorp and Dr. Singh who expressed their opinions that Kim was a battered or misused child or both. He too identified the photographs as being of Kim and as depicting the injuries which were apparent to him. They were injuries to both arms, ankles, left cheek and upper lip.

Police Constable Ronald J. Turner was the police photographer who took the photographs and he described them as having been taken to show the injuries which were apparent.

Police Constable Wyville assumed responsibility for the investigation. He spoke with Jennifer Popen and Annals Popen, but felt a degree of frustration in that discussion. He said that even if he directed a question to Annals Popen, Annals Popen would not respond unless Jennifer Popen indicated that it was in order for him to do so. He said Jennifer Popen was definitely the spokesman for them. He said she continually stated that Kim was very active and tended to fall from her crib or from dresser drawers and that that was how she had suffered the various injuries.

Police Constable Wyville too described Jennifer Popen as being quite hostile, resentful and unco-operative.

Police Constable Wyville spoke by telephone with Mrs. Dick of the Society who arrived very shortly thereafter. It was agreed that Mrs. Dick and medical personnel would speak with the parents without any police officer being present.

Police Constable Wyville later, having been informed by Mrs. Dick that the parents had signed a document giving the Society the right to take custody of Kim and thus having been satisfied that Kim was in the care of the Society, told both parents that the police would investigate the matter and that charges under The Child Welfare Act or the Criminal Code might be laid.

Mrs. Dick's evidence corroborated Police Constable Wyville as to his having telephoned her to request her to come to the hospital and to inform her of Kim's admission to hospital, the belief of the police and medical personnel that she had been abused, Jennifer Popen's desire to remove her from hospital and the resulting disturbance at the hospital. She said she responded immediately to Police Constable Wyville's call.

She said that on her arrival she saw all whom I have mentioned except Annals Popen, who apparently had not come with Jennifer Popen, but who was expected to arrive in response to a telephone call from Jennifer Popen.

Mrs. Dick described Jennifer Popen as stiff and withdrawn rather than hostile. She said Jennifer Popen appeared to be calm, but determined that until Annals Popen arrived she would say no more than to assert that Kim had fallen from the crib. She said that Kim had pulled herself from the crib onto the dresser and had fallen to the floor. I would contrast that statement by Jennifer Popen with Dr. Singh's testimony that a child of Kim's age would be unable to place herself in such a position of danger.

At this stage Mrs. Dick was aware only that Kim suffered bruising to both elbows and both legs in the area of her ankles. She was aware that X-rays had been taken, but she did not know what they showed. She was aware that the doctors were of the opinion that Kim's injuries did not appear to be such as would be caused in the manner Jennifer Popen indicated and that there was the possibility that Kim had been abused.

Mrs. Dick said that the responses made by Jennifer Popen did not appear to be a satisfactory explanation of Kim's injuries. Mrs. Dick said she then felt that Jennifer Popen was not being completely truthful. I regard that as an understatement.

Mrs. Dick said that when Annals Popen arrived and learned that Jennifer Popen had tried to remove Kim from hospital he expressed his displeasure and said that he had told her not to do that.

Mrs. Dick said that when asked how Kim had been injured Annals Popen replied that he could only go by what Jennifer Popen had told him. He said that Jennifer Popen told him that she had found Kim on the floor. This is another instance of Annals Popen's willingness to accept or believe what Jennifer Popen told him.

Mrs. Dick said Jennifer Popen then altered her explanation of Kim's injuries to say that she had not seen Kim fall, but had found her on the floor and had reached certain conclusions as to how she got there.

Mrs. Dick went on to say that Annals Popen's position was that he had not injured Kim and no one could take her from him.

Mrs. Dick was able to persuade both parents that in view of the lack of satisfactory explanation for Kim's injuries there could be no guarantee that she would not suffer further injury if removed from hospital to the family home.

Mrs. Dick testified that she was not then forming any opinion as to how Kim had been injured, but she wanted to ensure that Kim was not exposed to any further danger during the investigation of her injuries and the cause thereof.

Mrs. Dick understood that the Sarnia Police Force would continue their investigation and she intended to ensure that the Society also investigated.

Accordingly, particularly on learning the results of certain X-rays and on being told of Kim's hospitalization in March, 1975, Mrs. Dick determined to take Kim into the care of the Society. This was especially to ensure that Kim remained in hospital as long as necessary for treatment of her injuries. She had also noted that Annals Popen was unable to dissuade Jennifer Popen from her stated intention to remove Kim from hospital; thus she felt that the adequacy of the parents' behaviour towards Kim could not be ensured.

In the hospital Mrs. Dick was informed by Mrs. Hewitt that Kim had been taken to the Sarnia General Hospital the evening or night of August 29, 1975, because she had fallen from her crib, but was not admitted and Jennifer Popen was asked to bring Kim to that hospital for X-ray on August 30, 1975. Mrs. Dick understood that Kim was taken to St. Joseph's Hospital on August 31, 1975 because of another fall. The incidence of two falls was a factor in Mrs. Dick's assessment of the situation on August 31, 1975.

The consultation form signed by Dr. Thorp on August 31, 1975 supports the concept of two separate falls and two separate injuries. It reads:

> "Story of fall. Lt. elbow 30th A.M. Rt. elbow 3 days before. No medical help sought until midnight 30th."

Presumably that was based on information given to him by Jennifer Popen.

Jennifer Popen's evidence upon the Inquiry was that she had taken Kim directly from Sarnia General Hospital to St. Joseph's Hospital for a more thorough examination. I am prepared to accept that Jennifer Popen took Kim to Sarnia General Hospital and thence to St. Joseph's Hospital. But I am not prepared to accept Jennifer Popen's evidence as to why she chose to go to St. Joseph's Hospital.

I think the possible error in Mrs. Dick's understanding comes about because the appearance at St. Joseph's Hospital was just after midnight of August 30/31, 1975. In addition her understanding was based on information from Jennifer Popen, hardly a reliable source of clear information.

Mrs. Dick testified that she spoke with Annals Popen and Jennifer Popen about the visit to Sarnia General Hospital. She said Jennifer Popen told her she chose not to return there for X-ray as requested because in her view,

> "the child was fine and didn't need to go."

I contrast that with Jennifer Popen's evidence upon the Inquiry, as noted in a preceding paragraph, that Kim was taken to St. Joseph's Hospital for a more thorough examination. I contrast it also with the injuries which were found when Kim was examined and X-rayed. Kim certainly was not "fine" and she needed medical care, including hospitalization.

Mrs. Dick testified that in conversation with Annals Popen and Jennifer Popen at St. Joseph's Hospital on August 31, 1975 she discussed alternatives for the resolution of the matter that day. One was that Kim would immediately come into the care of the Society by unilateral action by the Society and the Society would immediately apply to the Provincial Court for wardship of Kim. In the alternative, while it pursued its investigation, the Society would take Kim into its care on a one-month non-ward agreement to be signed by the parents.

Mrs. Dick described the document referred to in that second alternative procedure as the parents' consent to the Society taking Kim into its care without any court order.

Mrs. Dick said that she explained to the parents that, regardless of the alternative they selected, Kim would be a ward of the Society and would be discharged to the Society from hospital when treatment of her injuries was completed.

Mrs. Dick testified that she did this to achieve an immediately peaceful solution and hopefully to obtain the co-operation of Annals Popen and Jennifer Popen in the future and to give police and the Society's investigators time to perform their functions.

Mrs. Dick testified that she suggested and Jennifer Popen and Annals Popen agreed to complete a non-ward agreement. Mrs. Dick testified that she had explained to them that that agreement could be cancelled either by them or by the Society during its stated term of one month and that, the agreement notwithstanding, the Society might begin proceedings in court at any time, if it chose.

Mrs. Dick testified that the parents also signed consents addressed to the hospital and to Dr. Jumean authorizing the release to the Society of medical information relating to Kim.

Mrs. Dick testified that she was informed that in connection with Kim's hospitalization in March, 1975 Jennifer Popen had claimed that Kim had fallen while in the care of a sitter who had abused Kim, but, on August 31, 1975, Jennifer Popen acknowledged to Mrs. Dick that her allegation against the sitter was false. Mrs. Dick said such changes in stories made her suspicious of Jennifer Popen.

Mrs. Dick testified that she also spoke to Jennifer Popen and Annals Popen about the incident Mrs. Hewitt described in which, she said, she had seen Jennifer Popen in a shopping mall and Kim had black eyes. She said the parents denied that Kim had black eyes.

I am satisfied that Mrs. Hewitt did see Kim as she described. I am unable to determine exactly when that was.

Mrs. Dick testified that, to her, an interesting fact was that the parents refused to have Dr. Jumean involved with Kim on August 31, 1975. She said they gave no reason for that refusal.

Mrs. Dick testified that the parents seemed to show little concern for Kim's injuries, but were more concerned about the possibility of her being removed from them. She said they accepted the conditions she imposed upon their visits to Kim in hospital.

Mrs. Dick said she informed the hospital staff that Kim was now in the care of the Society and was not to be released from hospital except to the Society.

Some criticism of Mrs. Dick's use of the non-ward agreement was voiced by Dr. Francis Joseph Turner, who was an expert witness upon the Inquiry. He had some concern that execution of that document by Annals Popen and Jennifer Popen may not have been a totally voluntary act by them. But Dr. Turner was understanding of Mrs. Dick's position. That Kim's safety was secured was, to him, a satisfactory temporary resolution of the matter.

Dr. Turner however then went on to express criticism that the Society did not move forcefully and quickly for an order of wardship of Kim. That order was not obtained until February 25, 1976, almost six months after Kim first came into the care of the Society.

Mrs. Dick did immediately prepare a Record of Inquiry in her own handwriting, setting forth, on the first page thereof, some of the particulars of Kim and her parents. On two succeeding pages Mrs. Dick reviewed the events to which she was party on August 31, 1975 and information which she was then given from whatever source. Those pages now are part of the Society's file. They have been reduced to about one and one-half typewritten pages to which have been added several pages of typewritten notations purporting to reflect the handling of Kim's case by workers in the Family Services Department of the Society. They include the belated recordings of the events of June 17, 1975 and two notations dated June 19 and August 29, 1975 respectively. They include further entries to June 29, 1977 with reference to Kim's younger brother, Karie, who was born July 6, 1976.

In that regard I cannot help but note that included in those latter recordings is one by Mrs. Shirley Lo under date of May 6, 1976. It begins with the sentence,

> "The Popen's second baby is due on July 6/76."

I wonder was that recording written long after the date ascribed to it or was it another instance of accurate prophecy, happier than the instances of prophecy I have noted earlier. I incline to the former view. I think the recording was written long after May 6, 1976, even after July 6, 1976.

Jennifer Popen's testimony was that she entered hospital on July 6, 1976 for the baby's birth. Deborah Ginn, a young high school student who had agreed to baby-sit for the Popens while Jennifer Popen was in hospital, testified that she had been called, by telephone, at about 2:45 a.m. on July 6, 1976 to come to the Popen home because Jennifer Popen was leaving for the hospital. I gathered that Miss Ginn was not aware that July 6, 1976 was as certainly expected as the date of birth as the Society's records would indicate.

Mrs. Dick's handwritten notes make it clear that on August 31, 1975 the Society, at least through Mrs. Dick and those who would then have access to the file begun with those notes on the Record of Inquiry was aware of the following facts, allegations and suspicions:

1) that the Sarnia Police Force was involved and concerned as to the possibility that Kim had been abused and Police Constable Wyville was a responsible police officer who might be contacted by the Society;

2) that Dr. Jumean was the family doctor, but there was a suggestion that Jennfier Popen did not want him to see Kim;

3) that Kim had been observed in the mall with black eyes, an observation which had been reported to Dr. Jumean who supposedly had contacted Jennifer Popen, but with then unknown results;

4) that Jennfier Popen alleged Kim could pull herself out of her crib and that thus Kim had fallen on August 29 and again on August 30, 1975. While Dr. Singh's written reports do not set forth the information, I presume that some, at least, of the Society's personnel would be aware that, as Dr. Singh testified upon the Inquiry:

> "Eight-month old babies are unable to stand up, or at least barely standing up, they're unable to definitely hold and stand up or climb out at that age...An 8-month old

> baby can barely stand up with support; it's impossible for an 8-month old baby to climb out of a crib and fall down to injure her elbows and other fractures which I have described.";

5) that before taking Kim to hospital in the early morning hours of August 31, 1975, Jennifer Popen had allegedly taken Kim to Sarnia General Hospital, but chose not to return there for X-rays as requested;

6) that both Dr. Singh and Dr. Thorp had observed Kim and concurred that her injuries were not such as might be expected to have been caused by falling and had strongly indicated that Kim had been abused;

7) that other hospital personnel suspected Kim had been abused;

8) that Kim's arm had been broken on an earlier occasion, supposedly by falling or by abuse from a baby sitter, but Jennifer Popen now withdrew the allegation as to abuse by the baby sitter; and

9) that there were some differences of opinion between Annals Popen and Jennifer Popen as to Kim's care, particularly as to her remaining in hospital, but both denied any abuse of Kim.

As that Record of Inquiry indicates, the file was opened "statistically only", to use Mr. Carter's words, as of August 31, 1975 and responsibility for it was assigned to "H.R.C.", Mr. Carter. I am satisfied that that assignment to Mr. Carter was effectively made on or shortly after September 2, 1975, the first business day after the Labour Day weekend.

The first and only group of paragraphs of that recording, attributed to Mr. Carter and acknowledged by him as being substantially of his composition, covers the period from September 1, 1975 to February 29, 1976 and appears to have been typed on or after February 29, 1976.

Thus, for six months or more there was no recording available to indicate to anyone how

Mr. Carter was managing the case, what he was doing, what he hoped to achieve, where he had succeeded, where he had failed, what his assessment of it all was. That seems to me to be an inordinately long period of time, particularly at the beginning of a serious case, expected to require service by the Society over an extended period of time, to be covered by one session of recording. One is left to wonder when the entry might have been made if the case had not been transferred to Mrs. Lo in February, 1976.

Kim was released from hospital, into the care of the Society, on September 5, 1975.

Its records do not reflect that the Society did anything whatsoever with reference to Kim during the period from August 31 to September 5, 1975 while she was in hospital, but Mr. Carter testified that he spoke with Police Constables Charlton and Wyville on September 2, 1975. He said they were investigating Kim's injuries and sought Mr. Carter's assistance in arranging separate interviews with her parents on September 3, 1975.

It is of interest to me to note that again the initiative for contact and co-operation flowed from the Sarnia Police Force and not the Society. I would have expected that the Society, primarily responsible for Kim's protection, and for the investigation of the allegation that she had been abused, would have sought out other community resources, including the Sarnia Police Force.

Mr. Carter testified that he arranged for Jennifer Popen and Annals Popen to come to the Society's office on September 3, 1975 where he arranged for them to be separated so that they might be interviewed separately by Constables Charlton and Wyville.

Mr. Carter also said that on September 3, 1975, Mrs. Kirby, a child care worker in the Society, interviewed Jennifer Popen to ascertain certain information with reference to Kim's care and feeding.

Police Constable Wyville testified that he interviewed Jennifer Popen and Annals Popen at the

Society's office on September 4, 1975. He acknowledged that he was unsure of the date, but he said the interview was quite unproductive. He felt Annals Popen was constrained in his responses by Jennifer Popen's domination. He said Jennifer Popen persisted in her explanation that Kim had been injured by falling from her crib and the dresser. I note that this was in spite of the fact that Jennifer Popen had, on August 31, 1975, acknowledged to Mrs. Dick that she had not seen Kim fall, but had merely found her on the floor and, from that, arrived at a conclusion as to how she fell. Police Constable Wyville had not at that time obtained all relevant medical reports and histories.

Chapter VIII

Significant Events in Kim's Life from September 5, 1975 to February 25, 1976

During this period Kim was released from hospital to the care of the Society under the personal supervision of Mrs. Mary I. Kirby.

The recordings prepared by Mrs. Kirby form part of the file maintained by the Children's Services Department of the Society. They appear to be detailed and thorough.

Mrs. Kirby's recordings describe Kim as being petite, with a well-developed frame. Reference is made to the injuries to her left elbow and ribs and to "red buttocks and perineum", which I believe to be "diaper rash" in a layman's terms.

Kim remained in the first foster home selected by the Society only until September 10, 1975 when she was transferred to the home of Mr. and Mrs. Adrian Cecile where she remained until her return to her family's home on May 27, 1976. The transfer was made only because the first foster home was too near to Kim's family home.

Mrs. Kirby is a registered nurse who, after several years of nursing, took a two year diploma course in social work and became a social worker with the Society in September 1974. In 1975 and 1976 she worked in the Child Care or Children's Services Department of the Society.

Mrs. Kirby became aware of Kim's case when Mr. Carter requested her to pick Kim up from the hospital on September 5, 1975. Mrs. Kirby complied with that request and placed Kim in the first foster home.

It would seem that the selection of that foster home had not been too carefully considered. Within a few days it was decided that Kim should be moved. In Mrs. Kirby's words it was

> "in the best interests of the child and the foster parents as well as the natural parents."

Apparently the first foster home was so situated that the natural parents might accidentally encounter Kim and the foster parents.

I do not recall any evidence as to who was responsible for the selection of the first foster home. It was a decision of the Society as represented by one or more of its employees. Thus it was the responsibility of the Society.

I do not suggest that the selection of the first foster home in any way derogated from Kim's care as a ward of the Society. But it would seem to me to be indicative of practices within the Society which, most charitably, might be described as careless or sloppy. One might reasonably ask why whoever in the Society made and approved Kim's original placement in a foster home had not first ascertained the physical location of that foster home in relation to that of the home of Kim's natural parents.

I am not in any way to be taken to be suggesting that this original placement in a foster home had any effect upon the eventual and ultimate tragedy. I wonder was it perhaps symptomatic of the ills that beset the Society that so apparently simple a task as selection of the location of a foster home could not have been accomplished without the complication of corrective action within five days solely because of the proximity of the foster home to that of the natural parents.

Mrs. Kirby testified that on September 5, 1975, Kim's left elbow was apparently the main area of concern as to her injuries. Other bruises were faint, but obviously had been much worse.

She said that Kim's first visit with her parents after her release from hospital occurred at the Society's offices on September 11, 1975. She said that Jennifer Popen seemed to evince anger towards the Society for having Kim in its care. She said this was demonstrated when she cautioned Jennifer Popen to be careful of Kim's elbow.

Mrs. Kirby cut that visit short because Kim was upset. Apparently that upset was because of the actions of Annals Popen and Jennifer Popen which Mrs. Kirby said were "a little unusual."

Thus again there was given to the Society a signal of possible danger to Kim, a signal of possible abuse. It was the same signal that Mrs. Saul had perceived on June 17, 1975. Then it was Kim's reaction to her mother. This time, it was Jennifer Popen's attitude and the way in which Kim was handled by her parents.

Mrs. Kirby testified that thereafter Kim visited with her parents at intervals of about two weeks and the visits went well. As to the visit on November 25, 1975 the record prepared by Mrs. Kirby notes

> "Parents appeared to be in a hostile mood initially but this appeared to fade by the end of the visit."

Mrs. Kirby testified that the hostility was not directed towards Kim nor did it have anything to do with her and

> "it must have been some antagonism going on between the two parents."

Thus on November 25, 1975, the Society had some further indication that all might not be well in the relationship between Annals Popen and Jennifer Popen. That should have been of concern to the Society in its development of plans for Kim's future. There was no testimony to suggest that that opinion formed by Mrs. Kirby had been communicated in any way to anyone else within the Society.

Mrs. Kirby did not regard as in any way unusual Kim's behaviour as it was reported to her by the foster parents. The foster parents reported that Kim appeared to regress in her behaviour and attitude and to have sleepless nights after the visits with her parents.

Mrs. Kirby's observation of Kim led her to believe that Kim had been emotionally or physically deprived prior to being taken into care. Mrs. Kirby based this on Kim's lack of development in such areas as ability to play with others, an ability she developed within about two months of her introduction to the foster home, and on Kim's great hunger for food when first placed in the foster home a hunger which gradually dwindled.

Mrs. Cecile, in whose home Kim resided from September 10, 1975 to May 26, 1976, said Kim was

> "scared. She didn't like people. She was mean."

when she came into the Cecile home. Mrs. Cecile said that by January, 1976 she noted a gradual change in Kim's behaviour. By then she would sit on someone's knee if only for a short time.

Thus, in September 1975 the Society was aware of the possibility that Kim was deprived of some element of proper or appropriate care in her parental home. That should have been of concern to the Society in its development of plans for Kim's future. There was no testimony that anyone in the Society other than perhaps Mrs. Kirby, was aware of Mrs. Cecile's observations and assessment.

On September 12, 1975, the day following Kim's first visit with her parents after her release from hospital, Jennifer Popen visited The Lambton Health Unit. She requested a letter for her lawyer to indicate that she took good care of Kim who had been removed by the Society. She later telephoned Mrs. Kuly and repeated the request. It was denied by Mrs. Kuly on the direction of Dr. Duncan. Mrs. Kuly informed Jennifer Popen that The Lambton Health Unit could not become involved because the time Mrs. Kuly had spent in the home would not enable her to vouch for the standard of care given to Kim.

Dr. Duncan testified that in Dr. Jumean's earlier report to her, the telephone call on June 16, 1975, he told her that Jennifer Popen beat Kim because Annals Popen beat Jennifer Popen when he was drunk. Dr. Duncan said that therefore The Lambton Health Unit could not truthfully have written a letter such as Jennfier Popen sought. In any event Dr. Duncan did not feel it was the responsibility of The Lambton Health Unit to provide such a letter.

In retrospect Dr. Duncan's view, as expressed in her testimony, was that if such a letter be requested by anyone in the future The Lambton Health Unit should respond in some way to such a request and not merely remain silent. She said that, if The Lambton Health Unit thinks it appropriate, it should write to the Society to state that its opinion is that the child should not be returned to the parents.

Thus, in retrospect, it would seem The Lambton Health Unit erred in not formally and in writing advising the Society of Jennifer Popen's request and the view which The Lambton Health Unit took of the request and the rationale of such view. Had that been done in Kim's case the Society, if it thought it necessary or advisable to do so, could have called someone from The Lambton Health Unit to testify upon the Society's application in respect of Kim.

Again it is my view that such error or omission by The Lambton Health Unit had little, if any, effect upon the long-range development of the ultimate tragedy. It perhaps indicates a lack of complete co-operation and exchange of information and views by and between two public or quasi-public organizations each dealing with the same people but approaching the people and the problem with different concerns, different skills and different aims.

Mrs. Kuly did speak with Mr. Carter at the Society to inform him of Jennifer Popen's request. He then advised Mrs. Kuly of Kim's hospitalization and release to the care of the Society and the pending charges of abuse against the parents.

Mrs. Kuly visited the Popen home again on September 17, 1975 to seek to establish or maintain a working relationship with Jennifer Popen and with an eye to the possible need of The Lambton Health Unit involvement to assist the family in the future, possibly in the event Kim were returned to her parents.

The Lambton Health Unit and Mrs. Kuly had no further involvement with Kim's case during this period, save and except to attend court as required in October, 1975 and January, 1976 by a subpoena delivered by counsel for the parents. On February 18, 1976 Mrs. Kuly received a letter from Mr. Higgins advising her that the matter was adjourned indefinitely and her appearance was not required.

There is no indication that the Society in preparing for the hearing of its application had any contact with The Lambton Health Unit to see if that Unit had any information that might be of use upon the hearing.

In December, 1975 the foster parents reported and Mrs. Kirby noted some problems with Kim after visiting with her parents. Mrs. Cecile testified that when Kim returned from visiting with her parents she reverted to the child she was when first, on September 10, 1975, placed as a foster child in the Cecile home. To use Mrs. Cecile's words she was "mean" and "hostile" and would "stay awake all night screaming" after each visit with her parents.

Mrs. Cecile testified that this manifestation of Kim's behaviour continued even beyond the period dealt with in this chapter and up until the time Kim was returned to her parents. Mrs. Kirby was unsure of the cause of those problems.

Again in January, 1976 Mrs. Kirby noticed a coolness between Annals Popen and Jennifer Popen. She also noted that Jennifer Popen appeared distant from Kim and refused to dress Kim, but was persuaded finally to put Kim's coat and hat on her. Mrs. Kirby felt this might have been caused by the adjournment of court proceedings and the dashing of the parents' hopes that Kim would be returned to them then. Mrs. Kirby felt that Jennifer Popen's cold behaviour toward Kim was inconsistent with her professed desire to have Kim returned and was an indication of Jennifer Popen's immaturity.

Thus again, in January, 1976, the Society had some indication that all might not be well in the Popen household and particularly that Jennifer Popen might not be able properly to care for Kim and that her professed desire for Kim's return was a sham or deceit conceived by Jennifer Popen for some reason of her own.

Mrs. Kirby recorded only the coolness of the parents. She did not record any other observation. She did not record any assessment. There was no testimony that anyone else in the Society was aware of what Mrs. Kirby had observed or of her asssessment thereof.

Mrs. Kirby testified that the first indication she had that Kim was to be returned to her parents' home was on February 19, 1976. She said this occurred when Police Constable Wyville and Charlton of the Sarnia Police Force came to the Society's office to speak to Mr. Carter. She said there was then a discussion about the development of the proceedings in the Provincial Court (Family Division) of the County of Lambton wherein Annals Popen was expected to enter a plea of guilty to the charge laid under section 40 of The Child Welfare Act and the same charge against Jennifer Popen was expected to be withdrawn.

Mrs. Kirby testified that that proposed development caused a great deal of concern to Mr. Carter. That concern related to the effect that that development might have upon the Society's application for wardship of Kim. Mr. Carter testified upon the Inquiry that he expressed his concern to Police Constable Wyville. He had believed that the charge against the parents had been under the Criminal Code not The Child Welfare Act. That would seem to indicate that either Mr. Carter had not inquired of Police Constable Wyville about the charge or else was unaware of the provisions of The Child Welfare Act.

Mrs. Kirby testified that, as a result of that discussion they, that is Police Constables Wyville and Charlton and Mr. Carter and Mrs. Kirby, immediately spoke to Mrs. Harvey to inform her of the situation and to express Mr. Carter's concern.

Mrs. Kirby testified that Mrs. Harvey's response was to the effect that:

> "she had the feeling that she would send maybe the child [Kim] back home before the court hearing."

Mrs. Kirby testified that that comment brought from Police Constable Wyville the statement that:

> "he felt if she [Mrs. Harvey] did that that the child would be dead in three months."

Mrs. Kirby testified that Police Constable Charlton, Mr. Carter and she also voiced strong opposition to the plan to return Kim to her home then. Mrs. Kirby's objection was based on concern over the possibility of undue disruption for Kim who was just then beginning to have a normal routine within the foster home.

As Mrs. Kirby put it in her testimony:

> "I felt that now this would be too soon to send the child back because she just hadn't had enough time to really have enough stability before we make another move because moves always disrupt the children and they do regress and I felt that this was just too soon."

Mrs. Harvey's testimony as to that whole discussion was that she remembered the occasion, but she did not remember what she or Police Constable Wyville had said. Mrs. Harvey testified that she had no plans to return Kim at that time, but did plan to return her eventually. She said that plan began as a "working hypothesis" and

> "apparently at some point [she] made the decision that it would be worthwhile trying it."

She thought that decision was made prior to February 27, 1976 and was based on reports she had received from the Society's workers and others.

When asked about those reports, which she said had come from Mrs. Kirby, Mr. Carter and Police Constable Wyville, Mrs. Harvey acknowledged that there was not anything particularly positive in any of them.

It is significant that all of those supposed sources of her information faced Mrs. Harvey on February 29, 1976 and expressed strong opposition to any plan to return Kim to her parents' home.

I would think a more truthful or complete answer would have been to the effect that until February 25, 1976 there was nothing positive in the reports if indeed there were any reports to Mrs. Harvey.

Mr. Carter had not been able, in his view, to carry out his tasks and had not dictated anything for the file. On February 19, 1976 he voiced his opposition to the proposal that Kim be returned to her home.

There was no evidence of any report from the Sarnia Police Force to the Society, particularly to Mrs. Harvey, prior to February 19, 1976 when Police Constable Wyville expressed opposition to the proposal.

Mrs. Kirby had made recordings in the file. They expressed concerns. I have noted some of them. On February 19, 1976 Mrs. Kirby voiced opposition to the proposal.

I had the impression that Mrs. Harvey applied her own views or philosophy in the hope that the Popen family unit could be re-established and Kim and as yet unborn children could be protected if the parents learned how to raise them.

Mrs. Harvey acknowledged that she made that decision alone. She said she could not recall Mrs. Kirby having voiced any opposition to Kim's return home, but said she imagined that Mrs. Kirby would have been opposed to it. I think it was more than her imagination. I accept Mrs. Kirby's testimony as to the events of February 19, 1976 and her expression of her opposition.

Mrs. Harvey said Mr. Carter had not stated to her his opposition to Kim being returned to her home, but she understood he did not wish her to be returned in February 1976. I think it was more than her understanding. I accept Mrs. Kirby's testimony as to the events of February 19, 1976 and Mr. Carter's expression of his opposition.

Mrs. Harvey testified that by February, 1976, she was committed to returning Kim, provided some goals set by the Society were achieved. She said those goals were particularly:

> "an improved relationship between the parents, better child care techniques and a relationship established between [the Society] and the family."

None of those goals are recorded in the files of the Society. Mrs. Harvey did not state by whom or when and how they were established.

She said that at the conclusion of the hearing of the Society's application she met with Annals Popen and Jennifer Popen and Mr. Higgins, their solicitor, to discuss her expectations of them. Those expectations included their attendance at some course, not then defined, to be provided by the Society, Annals Popen's continued attendance at Alcoholics Anonymous and their co-operation with the Society. She believed she would have indicated to them that if those expectations were met there would be hope that Kim might be returned to them.

Mrs. Kirby testified that within the Society the decision as to whether or not Kim was to be returned to her home was the responsibility of the Family Services Department of which Mrs. Harvey was Supervisor.

Mr. Carter testified that during the meeting with Mrs. Harvey on February 19, 1976 it seemed to him that Mrs. Harvey had decided by then that Kim would eventually be returned to her parents.

On all of the evidence I heard I share that view and can only wonder, as others who testified upon the Inquiry wondered, as to the basis of information or belief on which Mrs. Harvey made that decision particularly in the absence of the contact that Mr. Carter might ordinarily have been expected to have had with the parents. Mrs. Harvey herself had had only slight contact with them, mainly in the courtroom and waiting room of the courthouse.

There was no indication that any of the concerns of Mrs. Kirby and Mr. Carter were brought to the attention of Mr. Lovatt or that he evinced any particular interest in Kim's case.

It should be noted that on October 16, 1975 an information was laid by Police Constable Wyville of the Sarnia Police Force after consultation with the Crown Attorney.

Because of possible difficulty in proving who had actually inflicted the injuries upon Kim, which the Sarnia Police Force and the Crown Attorney felt it would be necessary to prove in the event a charge of assault were laid under the Criminal Code, the Crown Attorney recommended that the parents be charged under section 40 of The Child Welfare Act. That advice was eminently sound.

The information alleged that Jennifer Popen and Annals Popen, having the custody of Kim, unlawfully failed to protect her contrary to section 40(1) of The Child Welfare Act.

By summons served on October 22, 1975 that information was made returnable in provincial court on October 30, 1975. The division of that court was not stated on the summons, but reference was made to a courtroom in which a judge of the provincial court (criminal division) presides.

Prior to the laying of that information, the Society began, by an application to the Provincial Court (Family Division) of the County of Lambton on September 8, 1975, proceedings under The Child Welfare Act seeking an order declaring Kim to be a child in need of protection under the The Child Welfare Act and making her a ward of and committing her to the care and custody of the Society.

I set forth now a summary of the various court proceedings. I shall call the Provincial Court (Family Division) of the County of Lambton simply the "Court":

On September 8, 1975, Mr. Lovatt, Mr. Carter and Mrs. Harvey, on behalf of the Society, and Mr. Ian Harvey of Mr. Higgins' office, on behalf of Jennifer Popen and Annals Popen, appeared upon the Society's application in Court.

At that time it was indicated to the Court that the parents would oppose the application and that the Society was seeking an order making Kim a ward of the Society for six months.

Mr. Lovatt asked for an adjournment so that both parties might prepare. Thus Mr. Lovatt did at that time have some involvement with Kim's case and some knowledge of it. He should have known that it was a serious case and that it might require some careful or special management.

Mrs. Harvey, in her evidence upon the Inquiry, said time was needed by the Society to do all the work necessary in preparation for the hearing. She said that this was the usual routine, but the case had to be in Court to meet the requirements of The Child Welfare Act.

Mr. Carter stated in Court that three doctors would be involved and one was then on vacation for one month.

Judge Nighswander then explored with the parties the time that might be required for the hearing. Mr. Lovatt indicated two hours. Judge Nighswander then stated

> "...the earliest time would be the 29th of October, and I am going to take time on a Wednesday...I must say that I regret very much that there is no court time before then, but it's entirely out of my hands."

Kim was committed to the care and custody of the Society in the interim.

On October 29, 1975, Mrs. Harvey appeared for the Society and Mr. Higgins for the parents. Mr. Carter of the Society was present. Mr. Higgins sought an adjournment because of his involvement in an unfinished trial, but he also raised the point that "criminal charges" had been laid against the parents under section 40 of The Child Welfare Act and they were required to appear in another court the following day, October 30, 1975. He suggested that thus there was a multiplicity of proceedings.

He suggested that the charge under section 40 of The Child Welfare Act should be dealt with before the Society's application proceeded. In his evidence upon the Inquiry Mr. Higgins said that it was his view that was the correct sequence. He gave no basis for it. In the event, his view or wish ultimately prevailed.

Although Judge Nighswander had stated that if the hearing were adjourned "it will be certainly in December or early January before we can proceed" and although all agreed that medical witnesses had been subpoenaed and would be inconvenienced, Mrs. Harvey said she had no real objection to the adjournment sought by Mr. Higgins.

The hearing was then adjourned to January 19, 1976 with Kim remaining in the care of the Society in the meantime. Judge Nighswander indicated that he would reserve the whole of January 19, 1976 for the hearing and that the matter was "peremptory."

On October 30, 1975, in the Provincial Court (Criminal Division) of the County of Lambton the charge under section 40 of The Child Welfare Act was adjourned to November 13, 1975.

On November 13, 1975, the matter was adjourned and transferred to the Court to be spoken to on November 17, 1975. The transfer was made because section 20 of The Child Welfare Act gave jurisdiction in such matters only to a Judge presiding in a provincial court (family division).

On November 17, 1975 after pleas of not guilty were entered by the parents, that matter too was adjourned to January 19, 1976 for trial.

On January 19, 1976, Mrs. Harvey, appearing for the Society upon its application, sought leave to present all of the evidence which the Society proposed to call with the exception of that of Dr. Singh who was "not available." She asked that the hearing then be adjourned to receive Dr. Singh's evidence at a later date. Mr. Higgins objected. He said he had, only minutes before, learned of Dr. Singh's absence. He had learned that from Police Constable Wyville. His objection was based on his experience with difficulties arising in other cases the trials of which in the Court had been "split" by intervals of six to eight weeks. That was much the same period of time that Judge Nighswander mentioned when he discussed a possible adjournment on an earlier occasion.

Judge Nighswander pointed out that he was unable to set aside a whole day in early February and stated that he would pick the earliest date "that we have a whole day available."

In the end both matters were adjourned to February 25, 1976, peremptory, at least with reference to the Society's application, with Kim remaining in the care and custody of the Society until then.

On January 19, 1976 there was discussion in Court as to Kim's visits with her parents. Mr. Higgins seemed to state that Mr. Carter, who was present in Court, had informed Mr. Higgins' office that Kim became "fractious" after seeing her parents. Mrs. Harvey did state that Kim became upset with the visits.

Thus by January 19, 1976 the Society's personnel, especially Mrs. Harvey and Mr. Carter, in addition to Mrs. Kirby and the foster parents, were aware of Kim's reaction to visits with her parents at the Society's offices.

At this stage, at least insofar as the proceedings against the parents under section 40 of The Child Welfare Act were concerned, the phenomenon of lengthy delay in Court proceedings was reversed and the date for trial was brought forward.

On February 10, 1976 the Crown Attorney received, hand-delivered, a letter from Mr. Higgins stating:

> "...when this matter comes back before the Court under section 40(1) of The Child Welfare Act and on the Children's Aid Society application, that Mr. Popen will acknowledge responsibility for injuries to the child."

The letter went on to request that the matter be dealt with on the following day, February 11, 1976, or at 1:30 p.m. on February 23, 1976 because Mr. Higgins had another matter scheduled for February 25, 1976, the date to which the matters had been adjourned and he felt "this matter [could] be dealt with briefly as proposed."

Mr. Andrew M. Lang, then Crown Attorney for the County of Lambton, testified that on receipt of that letter he telephoned Mr. Higgins to advise him that no one from the Crown Attorney's office could attend in the Court on February 11, 1976.

Mr. Lang testified that during that conversation or later he spoke with Mr. Higgins about Annals Popen "acknowledging" responsibility for injuries to Kim. He said it became clear to him that Mr. Higgins was proposing that Annals Popen would plead guilty as charged and that the charge against Jennifer Popen would be withdrawn. Mr. Lang's understanding of the proposal seems to me to be the only reasonable conclusion to be drawn from Mr. Higgins' letter.

Mr. Lang's "clear distinct recollection" was that he then telephoned Staff Sergeant Allan, of the Sarnia Police Force, to advise him of that discussion with Mr. Higgins and to indicate to Staff Sergeant Allan that the position of the Society should be ascertained before any response was made to Mr. Higgins' proposal. He said that, about one and one-half hours, later Staff Sergeant Allan indicated to him that the Society was agreeable to the disposition of the charge under section 40 of The Child Welfare Act as discussed with and suggested by Mr. Higgins. I gather as well that Staff Sergeant Allan indicated that he, for the Sarnia Police Force, had no objection to that disposition.

Staff Sergeant Allan, while he recalled some conversation with Mr. Lang about Mr. Higgins' letter, was unable to recall any such conversation with anyone at the Society. He agreed that had he been instructed by Mr. Lang to do something he would have done it himself or would have ensured that it was done by another officer.

Similarly Police Constable Wyville recalled that he was informed of Mr. Higgins' proposal before the appearance in Court on February 23, 1976. He too had no recollection of having contacted the Society, but he felt it was possible he had spoken to Mr. Carter.

Mr. Carter and other emloyees of the Society denied that anyone at the Society was aware of the proposal until after it became a *fait accompli* on February 23, 1976. In his opinion, as expressed upon the Inquiry, that disposition of the charge under section 40 of The Child Welfare Act had a damaging effect upon the conduct of the Society's application for wardship.

However, Mrs. Harvey was present in Court when the charge under section 40 of The Child Welfare Act was dealt with on February 23, 1976. No explanation for her presence was given. The transcript of the Court proceedings does not indicate that she objected to the plea and withdrawal.

Mr. Higgins in his testimony said it was very likely that the Society were aware of the proposal he was making to Mr. Lang. He said he received his instructions on February 6, 1976 and, in keeping with his instructions, was then in touch with the Society to inform Mr. Carter that he was free to see Mr. and Mrs. Popen at will. Mr. Higgins even went so far as to say he thought his initial contact with anyone other than Mr. and Mrs. Popen with reference to the proposed disposition of the charge under section 40 of The Child Welfare Act was with Mr. Carter and that it was only later that he spoke with the Crown Attorney.

However informally it may have been done and though neither the Society's personnel nor the Sarnia Police Force officers who testified have any firm recollection or note of it having been done, I am satisfied that the Society was advised of Mr. Higgins' proposal and that the Crown Attorney and the Sarnia Police Force were prepared to accept it and act on it. I am satisfied that the Society indicated its concurrence.

I am fortified in that conclusion by my recollection of Mrs. Kirby's evidence that the proposed disposition of the charge under section 40 of The Child Welfare Act and Mr. Carter's concern arising therefrom were among the subjects discussed on February 19, 1976 in Mrs. Harvey's office when Police Constables Wyville and Charlton, Mrs. Kirby and Mr. Carter spoke with Mrs. Harvey. As well, how else or why else was Mrs. Harvey in the Court on February 23, 1976 for what seems to have been virtually a specially arranged appointment for the hearing of the charge under section 40 of The Child Welfare Act. I do not recall any evidence that her attendance in Court was merely a co-incidence.

Mr. Lang testified that from the wording of Mr. Higgins' letter he had assumed that the Society's application for wardship would also be brought forward to February 23, 1976, but he was not responsible for the conduct of that application. He felt it would be appropriate for both matters to be dealt with essentially concurrently.

Mr. Lang testified that following those conversations with Staff Sergeant Allan he instructed his only full-time assistant, Mr. Edward Hibberd, as to what had been discussed and that he, as Crown Attorney, was prepared to accept Mr. Higgins' proposal.

Mr. Lang testified that he was satisfied with the outcome, including the sentence imposed upon Annals Popen.

On February 23, 1976, when the charge under section 40 of The Child Welfare Act was dealt with, Mr. Hibberd appeared for the Crown and Mr. Higgins for the parents. As I have already written, Mrs. Harvey of the Society was present as noted on the transcript of that day's proceedings in Court and raised no objection to what occurred. From my assessment of Mrs. Harvey she would not have hesitated to voice her opinion if she had felt that what was happening was contrary to her wishes or to the interests of the Society and Kim.

The plea of Annals Popen was changed to guilty and the charge against Jennifer Popen was withdrawn. Mr. Hibberd had with him the brief prepared by Police Constable Wyville for use by the Crown Attorney. It contained a brief synopsis of Police Constable Wyville's attendance at St. Joseph's Hospital on August 31, 1975, Kim's injuries as noted at that time, Mrs. Dick's attendance at the hospital, some of Kim's prior medical history and injuries and the opinions of Dr. Singh and Dr. Jumean that Kim was a "battered" child as well as reference to Mrs. Hewitt's observations and Mr. Carter's involvement.

In essence, without making mention of the references in the brief to Mrs. Hewitt and Mr. Carter, Mr. Hibberd read the contents of the brief to the Court on February 23, 1976.

At that point Mr. Higgins was asked by Judge Nighswander whether Annals Popen agreed with the facts as read by Mr. Hibberd. I have read Mr. Higgins' response. It seems to me to contain no clear statement of agreement or disagreement with Mr. Hibberd's outline of the matter. Clearly it was taken by Judge Nighswander, in conjunction with Annals Popen's plea of guilty, as I am sure Mr. Higgins intended it to be, as sufficient to support a finding of guilt against Annals Popen.

In his remarks in Court, Mr. Higgins said he had not "quizzed" Annals Popen on the particulars of the various incidents, but was instructed that Annals Popen had "a drinking problem." He went on to say that Annals Popen

> "feels that he is probably responsible in whole or in part for the injuries [Kim] suffered."

Mr. Higgins went on to speak of the crib as being insecure. He then said

> "I have instructions from Mr. Popen that he accepts responsibility for this."

The juxtaposition of sentences seems to confine that acceptance of responsibility to the condition of the crib. Mr. Higgins went on to speak of the good standard of housekeeping in the Popen home and the prideful loving care of Kim by her parents. Mr. Higgins went on to say:

> "I can only conclude from what Mr. Popen tells me that he does not remember doing these things."

In his evidence on the Inquiry Mr. Higgins said he had no notes to indicate that prior to February 23, 1976 he had any information about any incident of alleged abuse of Kim prior to August 31, 1975. Mr. Higgins impressed me as a man who spoke precisely and carefully. I do not extend that portion of his testimony so as to form a denial that he had any such information prior to February 23, 1976.

In his submission to the Court Mr. Higgins then expressed hope that, if a Probation Officer were involved, a deeper inquiry would be made by the Probation Officer along with the Society's involvement. The whole trend of his comments appeared to absolve Jennifer Popen of any involvement except perhaps

> "poor supervision...of the actions of [Annals Popen] (which I think should be remedied and I am sure that the Children's Aid Society will look after that aspect)... and that whatever happened to Kim was by accident, as by Annals Popen dropping her while he was drunk, rather than by "abusive action."

I do not recall that anywhere in the evidence presented in the Court or upon the Inquiry was there any reference to Annals Popen having dropped Kim. Indeed the whole thrust of the evidence which was presented upon the Inquiry out of the mouths of Jennifer Popen and Annals Popen was that Jennifer Popen alleged and had told, even persuaded, Annals Popen that the injury to Kim was caused when she was struck by a slipper thrown by Annals Popen when he was drunk and did not later remember what he had done.

I assume that Mr. Higgins' reference to Annals Popen having dropped Kim was based on what one or other or both of Jennifer Popen and Annals Popen had told him. I would also assume that in that regard Mr. Higgins was the recipient of another "story" from Jennifer Popen and that Annals Popen too was persuaded to believe and accept it. The transcript of the proceedings in Court does not indicate that he in any way questioned what Mr. Higgins said. In view of my assessment of him that does not surprise me.

Annals Popen's evidence before this Inquiry leads me to believe that his plea of guilty to the charge under section 40, The Child Welfare Act was based on his willingness to be persuaded that he caused the injury to Kim by striking her with a slipper he had thrown. Judge Nighswander did not have the benefit I have had of hearing how Annals Popen came to have that willingness.

Thus clearly even Mr. Higgins' remarks should have alerted others, including Mrs. Harvey and the Society, that further and more complete investigation was required to ascertain what the situation in the Popen home and family really was.

A pre-sentence report was ordered and the matter was set over to March 29, 1976 for disposition.

Then on February 25, 1976 the application of the Society for wardship of Kim was heard by Judge Nighswander. Mrs. Harvey appeared for the Society and Ian Harvey of Mr. Higgins office appeared for the parents. Mr. Carter of the Society was present.

Mrs. Harvey told the Court that because Kim had been in the care and custody of the Society since August 31, 1975, the Society sought wardship for only two additional months from February 25, 1976.

In her evidence upon this Inquiry, Mrs. Harvey said she had spoken to Judge Nighswander in private prior to the hearing to advise him of her intention to make that submission. Upon the Inquiry she testified that at all times she hoped that, even though she asked for an order of wardship for only two months, Judge Nighswander would make an order for a longer period of wardship. While she may have spoken with Judge Nighswander on occasion, I do not think that she had with him a conversation such as she described. It is inconceivable that Judge Nighswander would have permitted it.

In her evidence upon the Inquiry Mrs. Harvey said she took that position in Court in the hope that it might expedite the hearing and the granting of wardship, but with the mental reservation that she hoped the Judge would direct a longer period of wardship. I doubt that she had any such mental reservation.

She said she felt that if she was granted an order for wardship, however short, she could later seek to extend it.

Nothing in the Society's files makes any reference to that tactic. I am doubtful, on all the evidence I heard, that she employed that deliberate tactic on February 25, 1976. I come to that conclusion particularly in the light of the testimony as to the meeting of February 19, 1976 when Mrs. Harvey is said, by Mrs. Kirby, to have stated she considered returning Kim to her parents before the hearing.

Mr. Harvey, for the parents, agreed with Mrs. Harvey's request for an order for wardship of only two months' duration.

Judge Nighswander made it clear he was not bound by the Society's request nor by the parents' agreement therewith. He specifically reserved to himself the determination of what disposition was to be made after he had heard evidence and submissions.

It should be noted that Mr. Carter, who had been directly responsible for the preparation for the hearing of the Society's application, testified upon this Inquiry that he, personally, had intended that the application would be for wardship of Kim for a period of six months. He said that was his intention even on February 25, 1976. Clearly Mrs. Harvey imposed her will and decision in the presentation of the Society's position to the Court. She did so without prior consultation with Mr. Carter or anyone else at the Society.

The transcript of the proceedings in Court does not show any dissent by Mr. Carter. No one asked for an expression of his opinion. He was not called as a witness though he was present at the hearing.

Mr. Carter testified upon the Inquiry that he was not consulted by Mrs. Harvey with respect to her intention to apply for wardship for a term of only two months. He said he disagreed with the position advanced by Mrs. Harvey, but did not feel free to intervene.

Thus Judge Nighswander was deprived of an expression of opinion which may have been of importance to him in his deliberations.

More importantly, Kim was deprived of any benefit that may have flowed from the expression of such an opinion and any elaboration thereof to show the basis and rationale of the opinion.

Police Constable Wyville testified before Judge Nighswander as to his observation of Kim's injuries on August 31, 1975. He testified that Jennifer Popen, when asked as to the cause of those injuries,

> "gave two or three different reasons exactly what happened."

By agreement, the facts presented upon the trial of Annals Popen on the charge under section 40 of The Child Welfare Act on February 23, 1976 were taken to be part of the evidence upon the Society's application.

Photographs of Kim taken at St. Joseph's Hospital on August 31, 1975 by Police Constable Turner were introduced.

Miss Hazel Cappa, the Director of Medical Records of the hospital, informed the Court of Kim's various admissions to and treatment at the hospital.

Kim was a patient admitted to the hospital from March 22 to April 3, 1975 for treatment of a fracture of the left humerus. She was an out-patient on April 12, 1975 for treatment of a respiratory infection. She was a patient admitted to hospital from April 28 to May 2, 1975 for treatment of bronchiolitis and diaper rash. Kim was a patient admitted to hospital from August 31 to September 5, 1975 for treatment of multiple bruises and a fractured humerus and on that occasion the presence of battered child syndrome was noted.

Dr. Singh testified briefly as to his various examinations and treatments of Kim and the, to him, unusual explanations given by the parents for the various severe injuries which Kim suffered.

Mrs. Hewitt testified as did Mrs. Dick and Mrs. Kirby.

Mr. Harvey, acting for the parents, stated he would not call any evidence, but Judge Nighswander, apparently pursuant to section 25(2) of The Child Welfare Act, called Jennifer Popen to testify. In his testimony upon the Inquiry, Judge Nighswander was unable to recall exactly why he had decided to call Jennifer Popen as a witness.

In response to a direct question by Judge Nighswander as to how Kim's arm had been broken on March 22, 1975, Jennifer Popen said that that had been an accident wherein Kim had fallen to the floor from her "little sitter."

As was the case so often when Jennifer Popen was testifying upon the Inquiry, her answer to Judge Nighswander is confusing. The confusion is as to whether the sitter was in or out of the crib. One sequence of the exchange is recorded in the transcript of the Court proceedings as follows:

> "Q. Where did she fall from?
> A. Had her out of her crib in her little sitter.
> Q. She was in her sitter in the crib?
> A. Yeah. I had her in a sitter."

As to the injuries which were seen at the hospital on August 31, 1975, Jennifer Popen's explanation to Judge Nighswander was that she had not seen them happen, but found them when she was dressing Kim and Kim cried. Again she gave a series of confusing answers which seemed to indicate the injuries were caused by Annals Popen holding Kim while he was drinking on the day before Kim suffered the fracture discovered on August 31, 1975. As to that fracture, Jennifer Popen said that Kim had fallen from the crib. She had not seen Kim fall, but found her on the floor. She denied seeing any bruises on Kim's knees.

Jennifer Popen told Judge Nighswander that she had taken Kim to Sarnia General Hospital where she was examined for about one-half an hour and found to have nothing much wrong with her. She said she was sent home from Sarnia General Hospital with instructions that Kim be watched and brought back the next day if there were anything further. She said that, as they left Sarnia General Hospital, Kim was crying so she said

> "we will take [Kim] to St. Joseph's and we will check her over good."

When one considers the nature and extent of the injuries suffered by Kim as found on August 31, 1975 and shown on the photographs taken by Police Constable Turner and when one compares Jennifer Popen's responses to Judge Nighswander with what she had told others, including Police Constable Wyville, Dr. Singh and Mrs. Dick, the implausibility of her responses to Judge Nighswander is apparent. But Mrs. Harvey for the Society did not cross-examine Jennifer Popen upon those responses.

In her evidence upon the Inquiry, Mrs. Harvey said she was "pretty sure" it was Jennifer Popen who had abused Kim. To my mind that testimony makes her failure to cross-examine Jennifer Popen all the more surprising.

I would think that it would have been appropriate for the Society and Mrs. Harvey to seek to assist the Court and themselves in the care of Kim by putting before the Court, even if only by cross-examination of Jennifer Popen, anything that might support such a suspicion or which might help to identify whoever abused Kim.

Judge Nighswander was deprived of the advantage of anything that might have flowed from any such cross-examination. Thus Kim was deprived.

Judge Nighswander then delivered what has been described in evidence upon this Inquiry as a strong judgement. He noted Dr. Singh's testimony that his opinion was that the explanation given by Jennifer Popen for the fracture discovered on March 22, 1975, namely that it occurred while she was changing Kim's clothing, was not consistent with the nature of the injury.

He noted that the injury to Kim's upper arms

> "was bruising that was around on both sides of the arm, and the explanation that this

> could have been caused by a fall is an explanation that seem physically impossible, for a person to be bruised on both sides of two arms. Dr. Singh stated that an explanation that was given to him was that the baby fell from the crib; he stated that babies can't pull themselves up at that age, and are not indeed to the point of walking or crawling out of a crib."

Judge Nighswander went on to state that Kim may have fallen from the rocker in the crib while the side of the crib was down, as Jennfier Popen had told him,

> "but it certainly could not physically possibly cause all the injuries to the child."

That could be stated even more strongly if one were to believe that Kim was in her sitter out of the crib.

Judge Nighswander stated in his reasons for judgement:

> "I am satisfied that the injuries to this child were caused -- many of them at least -- by mishandling by the people in whose charge the child was. Mr. Popen, the father, has admitted that some of this could have been caused by himself, and he pled (sic) guilty to a charge that accused him of this."

Judge Nighswander then found Kim to be a child in need of protection. He continued his judgement to find that Kim had suffered some injuries as a result of "brutal handling" by Annals Popen. He continued:

> "For a child two months of age to have a broken arm from being dressed, I accept the evidence of Dr. Singh that this is completely inconsistent with an injury that could be sustained while a child is being dressed."

Judge Nighswander rejected the Society's suggestion that he make an order for Kim's wardship for only two months. He said:

> "I am not satisfied that this is a sufficient length of time to be sure that proper steps have been taken to make this home safe for the child."

Judge Nighswander seemed to be concerned as to Annals Popen's problems with alcohol. He concluded his reasons for judgement as follows:

> "I am aware that the child has been in care for a length of time, but at the same time we have no evidence before us of what Mr. Popen has done, if anything, about his alcohol problem, and I am definitely going to note that he must give evidence that he has done something and that it is succeeding, before the Court will permit the child to return to its parents. This does not necessarily mean that the child will not be with its parents for a further six months, but simply means the Children's Aid Society have control for that period of time. I therefore, am committing the child to the care and custody of the Children's Aid Society, City of Sarnia, County of Lambton, for a period of six months dating from today."

It seems to be quite clear that Judge Nighswander was pointing out to those who should have been listening, the Society's employees, Mrs. Harvey and Mr. Carter, that he had great concern for Kim's safety in her parents' home. On the basis of what he had been told he seemed to feel that the greater threat to Kim came from Annals Popen, but nonetheless his remarks expressed some concern as to Jennifer Popen's role in Kim's care.

In the light of Mrs. Harvey's professed belief as to Jennifer Popen's involvement in Kim's injuries those remarks by Judge Nighswander should not have fallen on deaf ears.

The Society did not obtain a transcript of Judge Nighswander's reasons for judgement and

Mrs. Harvey apparently made no notes as to his comments. That indicates to me that she intended to manage Kim's case as she saw fit without regard to the views or opinions of even Judge Nighswander.

As I read the concluding paragraph of Judge Nighswander's reasons for judgement set forth above, I interpret it to mean that he expected Annals Popen would be called upon to present evidence to the Court as to his successful treatment of his alcohol problem before the Court would permit Kim to be returned to her parents. Mr. Higgins, in his evidence, said that was his understanding of the judgement.

I am aware of Judge Nighswander's evidence upon the Inquiry to the effect that he was content to permit the Society to exercise its discretion as to Kim's return to her parents' home. Nonetheless I observe his comments to Mrs. Lo in Court on August 4, 1976 when she presented the Society's application for a supervision order. He asked,

> "...so is it the agency's intention to ask for a supervision order for the child -- in other words, the child to be returned to the parents subject to the supervision of the Children's Aid?"

Mrs. Lo replied

> "Yes."

I interpret Judge Nighswander to have spoken as if Kim's return to her parents were to be effected later. It would seem he was unaware and did not contemplate that the return might already have occurred. The adjournment to September 13, 1976 as requested by Mrs. Lo was granted with the same proviso that had been imposed on all prior adjournments, namely

> "the child committed to the care and custody of the Children's Aid Society of the City of Sarnia, County of Lambton, until that date."

One is left to wonder what Judge Nighswander's reasons for judgement might have contained had he been made aware of some of the underlying suspicions of some of the Society's employees expressed upon this Inquiry that Jennifer Popen was the one who had caused Kim's injuries. Now, in the light of her plea of guilty at her trial in December, 1977 and her evidence upon this Inquiry, those suspicions appear to have been valid and well founded.

I do not think it is unduly harsh to say that Judge Nighswander was misled. All that might have been put before him was not. His attention was particularly drawn to Annals Popen and away from Jennifer Popen.

That may certainly have suited Mr. Higgins' purposes and those of his clients, Annals Popen and Jennifer Popen, at that time. I see nothing wrong in that from Mr. Higgins' point of view as a barrister involved in an adversary situation and relying upon information given to him by his client or clients. Unfortunately that information appears to have been false and those who were in a position to challenge it, the Society upon the wardship application and the Crown Attorney and the Sarnia Police Force upon the charge under section 40 of The Child Welfare Act, did not do so.

That they did not is perhaps understandable. In effect both matters were resolved in favour of the Crown and the Society by the plea of guilty to the charge under section 40 of The Child Welfare Act and the absence of opposition to the Society's application for wardship.

It would appear that as these matters proceeded it was assumed that they were two quite separate and distinct, but somehow related matters. The Society appeared to assume that responsibility for the prosecution of the information alleging an offence under section 40 of The Child Welfare Act lay solely with the Sarnia Police Force and the Crown Attorney for the County of Lambton and that responsibility for carriage of the application under The Child Welfare Act for custody of Kim lay solely with the Society.

The Society, particularly Mr. Carter, seemed to feel that once the Sarnia Police Force and the Crown Attorney for the County of Lambton had agreed to accept Annals Popen's plea of guilty to the charge under section 40 of The Child Welfare Act and to withdraw that charge against Jennifer Popen, the application of the Society under The Child Welfare Act was irretrievably prejudiced.

Mrs. Harvey in her evidence said that she felt she could not, upon the Society's application, pursue Jennifer Popen's involvement in Kim's abuse because the charge against her under section 40 of The Child Welfare Act had been withdrawn and the Society had no other evidence of Jennifer Popen's involvement in abuse of Kim.

With all due respect to the Society, Mr. Carter and Mrs. Harvey, my opinion is that each of those views is in error. My opinion is that the disposition of the charge under section 40 of The Child Welfare Act, by plea or otherwise, should not have caused the Society's personnel to feel that they were in any way inhibited from presenting upon the application for wardship of Kim evidence of whatever nature the Court would be prepared to accept. That might include evidence to the effect that, as well as Annals Popen, who had entered a plea of guilty to the charge under section 40 of The Child Welfare Act charge, Jennifer Popen had failed in her responsibilities to Kim or had actively abused her.

As one reviews the proceedings in the Court, it is interesting to note that during the time of those proceedings His Honour Judge Nighswander was responsible for the conduct of all matters to be heard in the Court and in the Provincial Court (Family Division) of the County of Kent. In September, 1976 another provincial court judge was appointed and was assigned responsibility for matters to be heard in the Court.

It is apparent to me that the responsibility assigned to Judge Nighswander by the Government of the Province of Ontario, namely all matters to be heard in the Court and in the Provincial Court (Family Division) of the County of Kent, was just too much for one judge to be able to administer and conduct without some of the long delays that occurred in the proceedings with reference to Kim and her parents. Even a judge as experienced, concerned and capable as Judge Nighswander could not avoid such delays. Those delays were not in Kim's best interests.

As Judge Nighswander said in his testimony:

> "I should point out that practice at that time, because there was very little court time available to do justice in all the matters that came before it, so we very carefully did not set a date for trial on anything until it was absolutely certain there was going to be a trial, because it might be three months afterwards and there wouldn't have been witnesses present in all probability to have gone on that day in any event."

Some of Mr. Higgins remarks, especially those relative to the suggestion by Mrs. Harvey that the case might be split awaiting Dr. Singh's evidence, support the view that there were lengthy delays because of the inability of the Court to set earlier dates for hearings or continuations of hearings. Those remarks were not challenged by anyone. In his evidence upon the Inquiry, Mr. Higgins stated that sometimes there were delays of up to two and one-half months between Court appearances.

It would seem to me that in such circumstances, where lengthy delay was almost certain to result if one did not proceed on the date fixed for the hearing of any matter in the Court, it was incumbent upon the applicant, the Society, or the Crown Attorney and Sarnia Police Force to be prepared and ready to proceed on any day fixed for trial or hearing and to resist any application for adjournment.

Perhaps if, before September 1976, there had been a judge of the provincial court (family division) responsible only for matters to be heard in the Court, some of the delays in proceedings and thus perhaps some of the delays and problems mentioned by the Society's personnel in the handling or conduct of Kim's case by the Society might have been avoided.

As one now, in calm retrospect, looks at The Child Welfare Act, the Crown Attorney and the Sarnia Police Force were in error in having the prosecution of the charge under section 40 of

The Child Welfare Act returnable in the Provincial Court (Criminal Division) of the County of Lambton. Those proceedings were properly returnable in the Court. However, that error did not, in my opinion, make any special or unusual contribution to the tragedy that ultimately developed. I am not persuaded that if both matters had proceeded in the Court from their respective dates of institution they would have proceeded any more speedily than they did.

I should say that the rationale of the Crown Attorney's advice to the Sarnia Police Force as stated in his testimony upon the Inquiry appears to me to be sound. He recommended that a charge be laid under section 40 of The Child Welfare Act because he felt that, from the Crown's point of view, it would be easier to prove the elements of that offence than to prove the elements of a charge of assault causing bodily harm under the Criminal Code. His opinion was that it would be easier to prove that the parents failed to protect Kim rather than that one or both of them assaulted Kim.

It should be noted that the Crown Attorney's office appeared to be understaffed. As I recall Mr. Hibberd's evidence he was able to appear on February 23, 1976 only by missing his lunch and being virtually on the run from and to other court appearances required elsewhere both in the morning and afternoon. His recollection was that he had no knowledge of the entire matter before his actual appearance in Court on February 23, 1976 when he received the Crown brief. He said part of the difficulty was that the Crown Attorney and his staff did not regularly appear in the Court at that time.

While the records of the Society do not disclose this, it was apparent to me, on the oral testimony and the Court records presented upon the Inquiry, that the Society, as represented by Mrs. Harvey, originally intended to apply for an order granting wardship of Kim for a period of six months. However, as I have already written, when the application ultimately came on for hearing on February 25, 1976 Mrs. Harvey, appearing for the Society, sought an order of only two months' duration. In Court Mrs. Harvey said that term was sought because Kim had, by then, been effectively in the care of the Society for six months. That submission on behalf of the Society was not opposed by counsel for the parents.

In making that submission Mrs. Harvey entirely ignored the fact that for those six months the Family Services Department of the Society, for whatever reason, had not done any of the work which even Mrs. Harvey said had to be done with the family over a long term. Even by the standards used by the Society that term would be longer than the three months that would have been the duration of involvement by the Short Service Team of the Society.

Judge Nighswander stated in Court that he was not bound by that submission or the agreement by or on behalf of Kim's parents. As he stated in his evidence upon the Inquiry, he was concerned, firstly, to ascertain whether or not Kim was in need of protection and, secondly, to ascertain whether or not the absence of opposition by the parents was solely because the application was for an order of only two months' duration. The learned Provincial Court Judge felt that it should be made clear to the parents that, regardless of the submission on behalf of the Society, he and he alone had the responsibility of determining the issues. The issues were whether an order of wardship should be made and, if such an order was to be made, for what period of time should it be effective.

It was clear to me from Judge Nighswander's testimony upon the Inquiry that he felt that the position taken by Annals Popen and Jennifer Popen upon the Society's application to him was tantamount to an admission by them that Kim was a child in need of protection under the terms of The Child Welfare Act and should be in the care and custody of the Society for a period of time. For all practical purposes the position of Kim's parents upon the application by the Society was much akin to Annals Popen's plea of guilty to the charge under section 40 of The Child Welfare Act.

While Judge Nighswander felt that the Society's position had not been forcefully put before him, he felt that was because the application appeared really to be not opposed by the parents. He felt that the procedure adopted by the Society was not at all unusual in the circumstances.

Judge Nighswander did state in his testimony that the only issue before him upon the Society's application was whether Kim was in need of protection and that the guilt or innocence of the parents or either or them was not in issue. I gathered he shares my view that the disposition of the charge under section 40 of The Child Welfare Act did not predetermine the result upon the Society's application for wardship of Kim.

Nevertheless it is my view that all available evidence should have been presented to him. That it was not is all the more surprising when one recalls the evidence of Mrs. Harvey upon this Inquiry that she wanted all the evidence before the Court and that, in seeking wardship for only two months, she felt no concern since she felt she could more easily extend the initial period of wardship than obtain the initial order for wardship.

My view is that any extension of a period of wardship would more easily flow from a strong evidentiary base laid during the initial hearing than it would flow from a weak evidentiary base at that time. Thus, in my view, the Society should have put its case as strongly as possible in the first instance. That was the responsibility of the Society.

It is of interest to note that during this period of time, September 5, 1975 to February 25, 1976, while Kim was in the care and custody of the Society, the Children's Services Department of the Society was attending, to her day-to-day needs, apparently quite successfully with the assistance of the foster home, Mr. and Mrs. Cecile. At the same time the functions of the Family Services Department of the Society in relation to Kim and her parents were, for all practical purposes, non-existent apart from preparation of the application for wardship and its presentation in Court.

Even in that preparation and presentation there was confusion and failure. Mr. Carter was responsible for the management of the case and delivery of the Society's services to the Popen family and for preparation of the application to Court. Mrs. Harvey was his supervisor. She was responsible for presentation of the application in Court. Mr. Carter was not aware that Mrs. Harvey intended to ask for a period of wardship of two months' duration rather than the six months' duration which he felt appropriate and which, until February 23, 1976, had been the only period discussed by the Society in Court.

Mr. Carter, to whom the case had been actually assigned by this time, testified as to the difficulties which he encountered in trying to perform some of his duties.

Mr. Carter said that Police Constables Wyville and Charlton called upon him on September 2, 1975 because of difficulties they were having in interviewing the parents. He said they sought his assistance in arranging separate interviews with the parents. He said he arranged for the parents and police officers to be in the Society's offices at the same time on September 3, 1975 when he managed to separate the parents and thus enabled separate interviews of them by the police.

Mr. Carter's position seemed to be that, because he was informed by Police Constable Wyville that "criminal" charges would be laid against the parents, "casework practices could not be established." He seemed to base this on the fact that the Court had not yet been called upon to determine who had abused Kim and he himself had some personal reservations on the matter. That seemed to me to be a statement by him that notwithstanding anything said by anyone he was uncertain as to whether Annals Popen or Jennifer Popen or both of them or neither of them had abused Kim. But why he should think that "casework practices could not be established" escapes me. That was a gross error by Mr. Carter. He did not properly appreciate either his role and responsibility or that of the Society.

Determination of the source or cause of Kim's injuries, while important, would be only one element in "casework practices." There were many other matters to be examined and resolved. The testimony of Mr. Lang and Judge Nighswander upon this Inquiry supports my view. The real issue upon the Society's application for wardship was whether or not Kim was a child in need of protection. The identity of the person or persons actually perpetrating the abuse was not essential to either the charge under section 40 of The Child Welfare Act or the Society's application for wardship. There was so much more that Mr. Carter and the Society should have tried to learn about Kim and her family. That was not done. Kim's interests were not well served.

Mrs. Harvey, in her evidence upon the Inquiry, seemed to share Mr. Carter's view that the position taken by Mr. Higgins prevented the Society from being

> "able to get in there [to the Popen house] and do the work that we were supposed to be doing ... [investigation of the Popen house] and working with the parents and finding out more about them, which is what one does."

The Society's personnel, as represented by Mrs. Harvey and Mr. Carter, misunderstood or misconstrued or were ignorant of the provisions of The Child Welfare Act.

Mr. Carter testified that on January 16, 1976, when Mr. Higgins telephoned to request a change in the date of the hearing returnable on January 19, 1976 he had told Mr. Higgins he would have to speak to "my [Mr. Carter's] clients" and Mr. Higgins replied:

> "Over my [Mr. Higgins'] dead body you do."

Mr. Carter testified that the adjournment from January 19 to February 25, 1976 was "mutually agree[d]" and Mr. Higgins consented to Mr. Carter speaking to Annals Popen and Jennifer Popen prior to that adjournment.

The transcript of the proceedings in Court on January 19, 1976 does not bear out the accuracy of that testimony. The transcript, while six pages long, does not record all of the discussion regarding the date of the next hearing.

It opens with Mr. Higgins' statement of readiness to proceed that day provided there is no delay or interruption. Then Mrs. Harvey asked for an adjournment because Dr. Singh was not present. Mr. Higgins had some comment on that. The only point agreed upon was that the Court, the Society and Mr. Higgins were available on February 25, 1976 and Judge Nighswander granted the adjournment to that date.

Later the same day in Court, in speaking to the request on behalf of the Crown Attorney for a similar adjournment of the trial of Jennifer Popen and Annals Popen upon the charge under section 40 of The Child Welfare Act, Mr. Higgins opposed the request and asked that the charge be dismissed.

I am satisfied that adjournment from January 19 to February 25, 1976 was not by mutual agreement.

Mr. Carter testified that again prior to the February 25, 1976 hearing he felt he had to speak to Mr. Higgins to obtain permission to speak to Annals Popen and Jennifer Popen so that, if required, he could give the Court

> "an accurate picture or statement of the conditions of the home and themselves [Annals Popen and Jennifer Popen] at that point."

He said Mr. Higgins granted such permission, but with the addendum:

> "Don't quiz them [Annals Popen and Jennifer Popen]."

I can only query how Mr. Carter felt he might obtain "an accurate picture or statement of the condition of the home and [the parents]" without "quizzing" the parents. Surely a merely physical visitation to and observation of the dwelling house and standards of housekeeping without some inquiry or interrogation of the parents would be meaningless in relation to abuse of the sort that caused injuries as severe as those suffered by Kim.

Mr. Carter testified that he felt he was thereby "legally restricted" and prevented from carrying out his normal case work practices. He neither sought nor received any advice from a solicitor.

It is clear to me that he acted in accordance with his own opinion. Apart from preparation of the material for the hearing of the Society's application for wardship he did virtually nothing which might ordinarily have been expected of a worker in the Family Services Department of the Society. As I have noted elsewhere even that preparation by Mr. Carter was incomplete. He did observe visits of Kim with her parents at the Society's office and he did physically inspect the family home on two occasions, January 16 and February 20, 1976, just before scheduled Court hearings. He did speak with the parents on September 3 and 24, 1975 to try to ascertain how Kim's injuries were caused, but he made no such effort after September 24, 1975 because Jennifer Popen told him Mr. Higgins had advised her not to talk to Mr. Carter and he, Mr. Carter, accepted that. He seemed almost to be in awe of Mr. Higgins and wished to avoid any "disturbance" with him.

Mr. Carter upon this Inquiry said he felt that Mr. Higgins had the right to restrict his interrogation of Mr. and Mrs. Popen. Mr. Carter testified that his role was not to investigate the parents but to "establish a rapport" with them. While pursuit of an investigative role might be difficult for a social worker and hamper the establishment of rapport it was, in my view, incumbent upon Mr. Carter to investigate or at least to ensure that someone did investigate. Without investigation the Society would be unable to ensure that the judge hearing its application would have all of the information necessary to enable the judge to make appropriate findings and dispositions.

In Kim's case Judge Nighswander did not have all of that information.

Mr. Carter's evidence was that, to his knowledge, the assistance or advice of solicitors was not available to the Society's personnel in 1975. In his words the Society's workers were in "a very precarious situation" in relation to proceedings in Court. Clearly he was not aware that the Board of Directors of the Society had on January 6, 1976 made funds available to engage a solicitor in any case in which the Local Director, Mr. Lovatt, felt it was necessary.

A copy of the minutes of the meeting of the Board of Directors of the Society held on January 6, 1976 was filed as an exhibit upon the Inquiry. The relevant portion is as follows:

> "Mrs. Harvey advised that, due to restraints, the agency was not allowed to hire a lawyer and since they had been involved in some cases of child abuse they felt the need of legal assistance. Mrs. Harvey has had some conversations with Mr. Ray Wyrzykowski, Director of Legal Aid, re. applying for Legal Aid for Society Wards and Non-Wards involved in such cases. Mr. Wyrzykowski is looking into this possibilities at present. Mr. Shafley moved that $2,500.00 be set aside in case of serious need for the Director in his judgement, to seek legal assistance. Mrs. Berkoff seconded. Carried."

That was the last item of business at the meeting. That is perhaps indicative of the attitude of Mr. Lovatt, Mrs. Harvey and Mr. Carter. The desirability of or need for legal counsel in abuse cases was raised with the Board of Directors four months after Kim came into the *de facto* care of the Society. The Board of Directors promptly made funds available. From the testimony upon the Inquiry Kim's was the only active case of abuse within the Society at that time. It must have been the one that caused Mrs. Harvey to raise the matter. But even with funds available for that purpose the Society's personnel did not seek or obtain the legal advice which they needed and knew they needed.

Mr. Carter felt it was important to any worker of the Society involved in the case to have full access to the home and discussion with the parents in a case such as this. To all intents and purposes he neither sought nor received any assistance to obtain such access although he did advise Mrs. Harvey of Mr. Higgins' demands.

Mrs. Harvey, as Supervisor of the Family Services Department, was Mr. Carter's immediate superior. She was aware of the difficulties Mr. Carter felt he was having as a result of the restrictions imposed by Mr. Higgins and accepted by Mr. Carter.

She did nothing about the matter even though she testified that "the Children's Aid Society really needed to work with this family" and she wished Mr. Carter had had more contact with the family. She testified she was not aware she could do anything about it, but she sought no assistance or legal advice.

Mrs. Harvey testified that had the Society worked with the Popen family, even from August 1975 until February 25, 1976, they might have been able to help the parents enough to prevent the ultimate tragedy, or, conversely, the Society might have been able to learn so much about the family that Kim would not have been returned home.

Mr. Carter testified that he felt he was in control in his dealings directly with Annals Popen and Jennifer Popen including his meeting with them on February 20, 1976 in preparation for the February 25, 1976 hearing. He said that was so even though Jennifer Popen moved from attitudes of indifference to attitudes of hostility.

He said that he and Jennifer Popen frequently clashed. He said she was the dominant one of Annals Popen and herself. He said she was vocally critical of the Society, the Sarnia Police Force, hospitals and doctors, particularly Dr. Jumean. Her criticism was that all of these were spying upon her and were suspicious of her and did not trust her.

None of those feelings or observations were mentioned in Court during any of the proceedings.

Mr. Carter testified that Jennifer Popen "lied profusely" and he found after his second visit with her that he

> "could not rely on one statement she made."

I presume that was the visit of September 24, 1975. He referred to conflicting stories she had given to him with reference to a child she had borne in Jamaica. In one version the child had died. In another version the child was alive and with Jennifer Popen's grandmother.

That was not mentioned in Court during any of the proceedings.

Mrs. Harvey in her testimony expressed the opinion that no one believed Jennifer Popen and she believed that at a later date she stated that opinion to Mrs. Lo.

That was not mentioned in Court during any of the proceedings.

Mrs. Lo, in her testimony upon the Inquiry, said that it was not until after Kim's death that she changed her opinion as to Jennifer Popen's credibility. Until then Mrs. Lo was prepared to accept Jennifer Popen's explanation as to how Kim had been bruised. That explanation was noted in Mrs. Lo's recordings in the files of the Society. Mrs. Lo testified that, while she had some suspicion as to the cause of Kim's injuries on earlier occasions, she had no suspicion that Jennifer Popen was abusing Kim during the period from May 27 to mid-July 1976. She believed that Kim was receiving adequate and satisfactory care during that period of time.

I believe that it was only after Kim's death that Mrs. Lo became suspicious that Jennifer Popen had injured Kim in August 1976 and earlier.

Nowhere in her testimony upon the Inquiry did Mrs. Harvey indicate that she advised or instructed Mrs. Lo that, because Jennifer Popen was not to be believed, inquiries should be made beyond the Popen family. I find it astonishing that the Society, particularly Mrs. Harvey, Mrs. Lo and Mr. Carter, not believing Jennifer Popen, did not expand the area of their inquiries and observations. They did a disservice to Kim by presenting the application to Judge Nighswander on the basis on which they did present it and particularly in permitting Jennifer Popen's testimony to be presented without challenge or cross-examination or rebuttal. They failed Kim utterly in that regard.

Mr. Carter testified that from all of what Jennifer Popen told him of her life in Jamaica, some of which he felt was really meaningful to her, he formed the opinion that events in that life were serious enough to have affected her. I do not know in what sense he uses the word "meaningful" nor do I know how Jennifer Popen was affected.

That was not mentioned in Court during any of the proceedings.

No real effort was made by the Society to determine the extent of any such problem or to learn the true nature of any such events and their affect upon Jennifer Popen.

Mr. Carter testified that on occasion Jennifer Popen told him that she had visions of her own mother who spoke to her and told her what to do. On one occasion she came to Mr. Carter's office because

> "her mother had told her to come."

That was not mentioned in Court during any of the proceedings.

Thus clearly in September, 1975, the Children's Aid Society was aware that Jennifer Popen "lied profusely", that the Society should not rely upon her statements, that events in her past had somehow affected her and that she spoke of having visions. But still nothing was done to investigate those past events and to seek to learn the truth of the various "stories" told by Jennifer Popen.

Mr. Carter meticulously complied with the strictures imposed by Mr. Higgins and did not interrogate Kim's parents. Apart from arranging for the attendance of doctors and hospital personnel and police officers to testify as to the March, June and September, 1975 incidents, he did nothing to investigate the background of the parents and their ability, psychologically, emotionally and physically, to care for Kim. He had knowledge of Jennifer Popen's "visions" of her mother. He did nothing to inquire into the effects that they might have upon her ability to care for Kim.

I gather from Mr. Carter's evidence that he spoke to Mrs. Harvey about the position taken by Mr. Higgins and that they, Mrs. Harvey and Mr. Carter, decided that Mr. Carter must still visit the family home. But there was no suggestion he would interview the parents as he might otherwise have done. What purpose might be served by such visits without discussion with Kim's parents escapes me. I think such visits would be meaningless and useless.

No one from the Society, so far as Mr. Carter was aware, spoke with the Crown Attorney or anyone in that office about what was involved in either the charge against the parents under section 40 of The Child Welfare Act or the Society's application for wardship.

Mr. Carter did not seek any psychiatric or psychological assessment of Jennifer Popen even though upon this Inquiry he testified that he considered such assessment might have been appropriate.

Mr. Carter testified upon this Inquiry that he felt that with the Sarnia Police Force and Jennifer Popen's doctor, presumably Dr. Jumean, involved he felt that they, the police and doctor, would have attended to that. Nowhere was there any indication that he advised either the police or any doctor that this was his expectation of them. They were merely witnesses upon the Society's application. Surely in preparation for the hearing he would have interviewed them as to what evidence they might be able to give and, if he was expecting evidence with reference to any such assessment, he would have inquired specifically as to whether it was available.

Mr. Carter knew who would be present as witnesses. He knew that none of them could testify as to any such assessment. None of them was a psychiatrist or psychologist.

Indeed, Mr. Carter in his evidence upon this Inquiry, said he did not recommend to anyone specifically the need for any such assessment of Jennifer Popen. I doubt he gave much, if any, thought to such need.

At another point in his testimony, Mr. Carter said he felt it was the responsibility of the Sarnia Police Force to interview the "alleged suspects", presumably Annals Popen and Jennifer Popen, and get confessions from them, but there is no indication he communicated that expectation to the police or even discussed with the police the matter of interrogation of Annals Popen and Jennifer Popen. Expectation of "confessions" strikes me as a bit of naivete.

From his own testimony as to events on September 2, 1975 Mr. Carter was aware that police officers were encountering difficulty in their efforts to interview Jennifer Popen and Annals Popen. That, coupled with Mr. Higgins' position as to interviews with his clients, should have indicated to Mr. Carter that "confessions" were not forthcoming.

In another part of his testimony Mr. Carter said that his concern over the disposition of the charge against Kim's parents under section 40 of The Child Welfare Act came about because he felt that upon the Society's application for wardship, he would have difficulty in proving that Kim was abused or who had abused her.

This is further evidence of Mr. Carter's failure to understand the nature of proceedings under section 40 of The Child Welfare Act and the elements of the offence alleged in the information laid against Annals Popen and Jennifer Popen.

He said he relied upon the Sarnia Police Force to do the investigation to obtain information "restricted from [his] role." There is no indication he communicated that reliance to the Sarnia Police Force. Mr. Carter did not say why he felt the Sarnia Police Force had any greater power to investigate and interview the parents than he had.

More importantly, no mention was made of any of this in the proceedings before Judge Nighswander. On the testimony presented in Court, Judge Nighswander directed the greater part of his concern towards danger to Kim emanating from Annals Popen. In his reasons for judgement, he seemed almost to express sympathy for Jennifer Popen as a loving wife and mother who, while testifying before him, sought to minimize what was presented to the Court as abuse of Kim by Annals Popen, her husband.

One can only wonder what Judge Nighswander might have said in his reasons for judgement had the Society, through Mrs. Harvey and Mr. Carter, expressed to him all of the concerns they had and their suspicions as to Jennifer Popen's involvement in the abuse of Kim.

It is of interest to note that Mr. Carter felt that Mrs. Harvey, less than a week before February 25, 1976, was not familiar with the evidence available for presentation upon the Society's application

> "unless she had directly interviewed each of the witnesses."

There was no evidence of any such interview by Mrs. Harvey with any witness.

That indicates to me that Mr. Carter had not reported to Mrs. Harvey upon the development and preparation of the case. It also tends to rebut any suggestion by Mrs. Harvey that her decision before February 25, 1976 that Kim would be returned to her home was based on any report from Mr. Carter. I do not believe that Mrs. Harvey's decision was based on anything reported to her by Mr. Carter.

In his evidence upon this Inquiry, Mr. Carter shared my view that the typewritten transcripts forming the Society's files were less than dependable. He mentioned some specific errors or omissions in those transcripts as they related to matters he had recorded. He said that they omitted reference to his concern as to the danger inherent in the construction of the porch at the Popen home which he observed and also omitted the transfer summary as he would have set it forth. He said other items were not transcribed as he had written them.

He said that often the preparation of the typewritten records was "weeks behind." He said that he had objections to the procedure whereby the typewritten material was returned to Mrs. Harvey rather than returned, I presume with the handwritten notes, directly to the worker whose notes were being transcribed.

However, Mr. Carter had never expressed that objection aloud to Mrs. Harvey or anyone.

Mr. Carter testified upon the Inquiry that it was important that there be speedy determination of the issues as to whether the Society should have wardship of Kim so that the Society could set out its plans and goals for her and so that the parents might know what was to occur.

He seemed to be saying that the Society had not until then established goals for the management of Kim's case. His comments as recorded in the Society's file supports that view. There is no written record of any goals having been considered or established.

This contradicts Mrs. Harvey who, in her evidence, indicated that certain actions were taken by her, particularly the establishment of the "working hypothesis" that Kim was to be returned to her parents' home, provided some goals set by the Society were achieved. She said those goals included particularly:

> "an improved relationship between the parents, better child care techniques and a relationship established between [the Society] and the family."

None of the records of the Society support her evidence. I do not accept it.

Clearly on the facts that desirable objective, stated only upon this Inquiry, was not attained in Kim's case. For all practical purposes six months elapsed from the time Kim came into the custody and care of the Society on August 31, 1975 until the conclusion of the hearing of the Society's application on February 25, 1976 when Kim was found to be a child in need of protection and was made a ward of the Society for a period of six months.

Mr. Carter's evidence was clear that, until the conclusion of the Court proceedings on February 25, 1976, he felt the Society was not in a position to plan for Kim's future and he had not begun to develop any such plans.

Thus it seems to me that, from August 31, 1975 to February 25, 1976, the Family Services Department of the Society did no more than purport to prepare for the hearing of the application brought by the Society to have Kim placed in the care and custody of the Society.

It is equally clear that Mrs. Harvey is not correct in her testimony to suggest that the Society had established goals for Kim.

Thus in this period a fourth arc in the circle of tragedy ringing Kim was formed by the failure of the Family Services Department of the Society to perform all of its usual procedures and the fifth arc in that circle, the second of two major arcs, the decision to return Kim to her parents, was made by Mrs. Harvey.

Chapter IX

Significant Events in Kim's Life from February 25 to August 11, 1976

On or about February 25, 1976, Mrs. Harvey advised Mr. Carter that he would be relieved of responsibility for management of Kim's case after the order for wardship was made. She told him that the case was to be transferred to Mrs. Lo.

Mr. Carter's evidence was that it was announced to him as Mrs. Harvey and he left the Provincial Court (Family Division) of the County of Lambton, which hereafter in this Chapter shall be called the "Court", on February 25, 1976. He said the only explanation given to him was that it was "for ethnic reasons." Soon after that he dictated a long summary of events as he knew them from September 1, 1975 to February 29, 1976, he having selected that date for the sake of convenience, it being the last day of the month.

His notes reveal that during the period of September 8 to October 22, 1975 the Society received detailed information as to Kim's various periods in hospital from March 22, 1975, April 22, 1975 (sic) and August 31, 1975, along with Dr. Singh's discharge report, all of which he indicated were in the Society's file. His notes indicated that all of this was "self-explanatory." I can only conclude and presume he meant that it was clear that Kim was the victim of abuse.

As to the conclusion of the Society's application for wardship on February 25, 1976 Mr. Carter wrote that Annals Popen was to receive psychiatric help, he and Jennifer Popen were to attend the Parent Effectiveness Training Course, the Society were to supervise their home weekly and Kim's visits to the home were to be supervised by the Society.

It would seem that Mr. Carter equated "psychiatric help" with "[doing something] about his alcohol problem," the words used by Judge Nighswander in his reasons for judgement. I do not know the basis for his comments as to the Parent Effectiveness Training Course and the supervision by the Society of the home and of Kim's visits. Judge Nighswander's reasons for judgement make no mention of those matters.

Mr. Carter set forth lengthy personal observations. He wrote of Jennifer Popen as being a "proverbial liar" and "her usual evasive self" and that she was

> "young [and] inexperienced"

as a mother.

He wrote of circumstances in the family and difficulties in that familial relationship, including Jennifer Popen's isolation from Annals Popen's "extended families." He wrote of Mrs. Popen's handling of Kim.

He wrote of Jennifer Popen's health and possible problems in that connection -- including unexplained "blackouts" in respect of which Mr. Carter noted Annals Popen was not aware or

> "Mrs. Popen is lying again"

and her pregnancy which at times she denied.

All of this would seem to indicate that Mr. Carter had some substantial reservations as to the credibility of Jennifer Popen. In retrospect those reservations were well-founded. Mrs. Lo and Mrs. Harvey, had they read his observations, were certainly forewarned.

Mr. Carter said he did not meet with Mrs. Lo to discuss any of this or any other matter in connection with Kim or the Popen family or the transfer of the case from him to Mrs. Lo. He said Mrs. Lo would have had access to his notes as recorded in the file, but he felt the typewritten transcript did not contain all of his notes.

There is no evidence as to when his notes, transcribed or otherwise, were placed in the file and thus available to Mrs. Harvey and Mrs. Lo. I am not satisfied that either Mrs. Harvey or Mrs. Lo read Mr. Carter's recordings at any time during Kim's life.

In fairness, the omissions or errors mentioned by Mr. Carter seemed to me to be of little consequence. But one is left to wonder whether there were errors or omissions, not only in Mr. Carter's recordings, but in all of the Society's recordings, that may have been of significance.

I have little faith in the reliance that one may place upon the Society's recordings, particularly in the Family Services Department, which were produced upon the Inquiry. In the Children's Services Department it seemed to be the practice that the worker who dictated the recordings did have an opportunity to compare the transcript with original notes and, presumably, to correct the transcript if necessary. That apparently was not so in the Family Services Department. Even in the Children's Services Department that opportunity was not always exercised, or was demonstrated in the instance of Mrs. Kirby's recording dated April 26, 1976.

Similarly it is clear to me that a discussion between the retiring social worker and the incoming social worker, Mr. Carter and Mrs. Lo in this instance, would have been invaluable. Mr. Carter could enlarge upon his notes. Mrs. Lo could ask for explanation and comment and receive it.

Mr. Carter testified that ordinarily transfer of a case was effected only after a discussion of it by the "team" of workers involved, and the Supervisor. He said "team" meetings were called specifically to discuss transfers.

While the usual procedure was not followed in this instance and while he did not agree that the case should be transferred to Mrs. Lo, Mr. Carter was not upset by those facts.

However, he did feel that when any case was transferred it would be of assistance to the newly assigned worker to have a complete oral briefing from the worker who had previously managed the case. The logic of that position seems to me to be incontrovertible.

Mrs. Harvey's memory, a rather shaky foundation, was that, prior to February 25, 1976, she had advised Mr. Carter that the case would be assigned to Mrs. Lo who would be in Court to hear the evidence presented. There was no testimony presented upon the Inquiry that Mrs. Lo was in Court when evidence was presented on February 23, 1976 upon Annals Popen's trial under section 40 of The Child Welfare Act. Mrs. Lo testified that she was not in Court during the wardship application on February 25, 1976. That was when witnesses were called and the summary of evidence at Annals Popen's trial on February 23, 1976, was accepted as evidence upon the wardship application and reasons for judgement were delivered by Judge Nighswander. Thus, if Mrs. Harvey did have any such intention that Mrs. Lo be present to hear the evidence, that intention was not fulfilled.

Mrs. Lo was in Court for Annals Popen's sentencing on March 29, 1976.

I prefer Mr. Carter's evidence to that of Mrs. Harvey as to when she informed him of the transfer of Kim's case.

Mrs. Harvey said she made the decision because Mr. Carter had a very heavy caseload and she wanted Kim's case to receive a great deal of service. She had decided Mrs. Lo could provide that service notwithstanding Mr. Carter's experience, expertise and community resources and Mrs. Lo's apparent lack thereof.

Mrs. Harvey denied that she had told Mr. Carter that the transfer was made "for ethnic reasons."

I prefer Mr. Carter's evidence to that of Mrs. Harvey on that point.

Mrs. Harvey testified that, in addition to easing Mr. Carter's workload, factors in her decision were that Mrs. Lo was closer in age to Jennifer Popen and also had a young child, that Mrs. Lo had a confident manner and absorbed information quickly and that Mrs. Lo was liked and respected by others of Society's staff.

Mrs. Harvey added that she had intended to give Mrs. Lo "intensively close supervision" although she was satisfied that Mrs. Lo had received "really quite intensive training." That training, according to Mrs. Harvey, consisted of being in the same room as an experienced worker for a month, thus picking up tips on performing her duties, and of attending team meetings and weekly supervisory meetings or discussions with Mrs. Harvey.

Those reasons which Mrs. Harvey gives for the transfer of Kim's case from Mr. Carter to Mrs. Lo appear to me to be shallow and hollow and without substance.

I am unable to determine the real basis for Mrs. Harvey's decision to transfer Kim's case to Mrs. Lo. No witness with professional qualifications in social work expressed an opinion providing any support for that transfer. All who were asked expressed opinions that the transfer was inappropriate.

The "really quite intensive training," to use Mrs. Harvey's phrase, which Mrs. Lo received was, in my opinion, nothing of the sort. It too was without substance. The "intensively close supervision" which Mrs. Harvey intended to give to Mrs. Lo did not materialize.

Mrs. Lo began her duties in relation to Kim by a visit to Jennifer Popen at her home on February 27, 1976.

Mrs. Lo had begun her employment with the Society on December 5, 1975 as a social worker, Class I, the lowest category of social worker in the structure of the Society. She was placed in the Family Services Department. She had been interviewed only by Mrs. Harvey prior to her employment by the Society. Mrs. Harvey effected that employment.

Mrs. Lo had no specific training or background in social work. She had taken some peripherally related courses such as child development, social psychology, sociology and psychology while attaining a degree in Elementary Education from the University of Connecticut in 1972. It would seem to me to be apparent that, despite Mrs. Lo's intelligence and willingness, those courses did not qualify her to administer a case such as Kim's with parents such as Annals Popen and Jennifer Popen.

From Mrs. Lo's evidence it was clear to me that she received no formal period of training or instruction in her duties, but merely had the opportunity to observe how other social workers in the Family Services Department performed some of their duties. The skills, experience, education and training of those other social workers were not presented in testimony. What Mrs. Lo observed them doing was not presented in any great detail. She did hear a worker or perhaps workers engaged in telephone conversations, but of course could not hear what was said by the person to whom the Society's worker was speaking. I have no way of fully assessing the value of whatever Mrs. Lo may have gained from such observations, but I would think it would be of little assistance to her in duties relevant to Kim's case the only then documented current child abuse matter in the Society.

There was nothing to indicate that any of the situations handled by those social workers while Mrs. Lo observed them in any way corresponded to the circumstances of Kim's life.

In the vernacular, Mrs. Lo entered upon her assignment to Kim's case "blind". She had no idea of the significance of that assignment or its ramifications or intricacies or subtleties or really what was expected or required of her and what she was to do and what she could require anyone to do.

In retrospect one can only sympathize with Mrs. Lo. She was thrown by Mrs. Harvey into a situation well beyond her depth. It was probably well beyond the depth of many social workers who were qualified beyond Mrs. Lo's training and experience which consisted merely of observing for a few weeks how other social workers dealt with cases much less complicated than was Kim's case.

Mrs. Lo testified that shortly before the wardship hearing on February 25, 1976, Mrs. Harvey informed her of Kim's case, with some information as to the injuries Kim had suffered and as to the attitude of her parents toward Mr. Carter. Mrs. Lo said she understood the parents were very hostile toward Mr. Carter and refused to talk to him. Her testimony was that Mrs. Harvey told her the case would be transferred to her because her child was about Kim's age and her own age was closer to that of Jennifer Popen so that it would probably be easier for Jennifer Popen to relate to her than to Mr. Carter. Mrs. Lo testified that Mrs. Harvey mentioned that having a personality different from that of Mr. Carter might make it easier for Mrs. Lo to work with the parents.

While Mrs. Lo recalled no reference having been made to her own ethnic background, she did feel that the fact that she too was a recent immigrant to Canada was a factor in Mrs. Harvey's belief that it would be easier for Mrs. Lo than for Mr. Carter to work with Jennifer Popen.

It seems to me that by transferring Kim's case to Mrs. Lo, Mrs. Harvey really acceded to Jennifer Popen's wishes. Mr. Carter was an experienced social worker and clearly was suspicious of Jennifer Popen. While he did not assert himself as forcefully as he might have I am sure that Jennifer Popen sensed that Mr. Carter was not going to believe all that she told him and would perhaps learn what really were the causes of and circumstances surrounding Kim's injuries.

I have written of Jennifer Popen's intuition and her ability to manipulate people. This would seem to be an instance of it. Mrs. Harvey played right into Jennifer Popen's hand.

Kim's case was the first case involving child abuse in which Mrs. Lo was involved. In January, 1976, she had worked upon about ten cases. I gather none of those ten cases was as serious or had the complications which Kim's case presented. Just what work she did on those cases was not explained.

On receiving the case and in preparation for her duties Mrs. Lo read the Family Services Department's file on Kim. At that time Mr. Carter's dictation for the period from September 1, 1975 to February 29, 1976 had not been transcribed. There was no evidence as to when it was transcribed. Her recollection was she received that transcription shortly, perhaps a couple of days, after her initial visit with Jennifer Popen on February 27, 1976, but I am left to wonder when that was or when Mrs. Lo read it.

Thus, apparently all that Mrs. Lo saw in the file at the outset of her involvement in Kim's case was the note dealing with the June 17, 1975 visit of Mesdames Saul and Hoad and Police Constable Gander to the Popen home and the note of the events at the hospital on August 31, 1975 recorded by Mrs. Dick. That in total is about two and one half pages. That would not take long to read nor would it be of much use to Mrs. Lo in her assignment.

Mrs. Lo testified that on receiving the file she was aware that the Society had obtained wardship of Kim for a period of six months from February 25, 1976 and that the goal of the case was to return Kim to her home at the expiration of that time unless there were some special reason not to do so. All of that clearly emanated from Mrs. Harvey. Mrs. Lo was not present at the hearing of the Society's application. She was present at Annals Popen's trial under section 40 of The Child Welfare Act only on March 29, 1976 when sentence was awarded. She had not spoken with Mr. Carter and chose not to seek him out for information.

Mrs. Lo was quite frank to acknowledge that she was not aware of the provisions of The Child Welfare Act and the procedure that the Society might have taken thereunder if so advised during or at the expiration of the initial period of wardship. She said she may have known that in some cases wardship could be extended, but she did not feel wardship of Kim could be extended or, if it could, she felt it would be difficult to obtain the necessary court order. She seemed to feel that having obtained an order for six months' wardship, the Society would have little chance of obtaining Crown wardship later or even an extension of the Society's wardship. That seems to me to indicate a woeful lack of knowledge of the provisions and application of The Child Welfare Act.

Mrs. Lo was aware, from Mrs. Harvey, that members of the Sarnia Police Force and others had strong feelings about the case, and that some of those feelings related to the question of Kim's return to her home. Mrs. Lo did not discuss the case with Police Constable Wyville or Mr. Carter, but did speak with Mrs. Kirby, the child care worker in the Society. Had Mrs. Lo spoken with Police Constable Wyville or Mr. Carter, she might have looked on Kim's case somewhat differently.

Mrs. Lo had a number of visits with Jennifer Popen in the Popen home and discussed with her a variety of subjects, including her family and life experiences in Jamaica. Mrs. Lo felt that Jennifer Popen was receptive to her, but yet was evasive in her answers. Mrs. Lo testified that while discussing Kim's injuries, Jennifer Popen said that

> "no matter how frustrated that she [Jennifer Popen] got she could not strike out at her child and that she knew she had not hurt the child before and was covering up,"

but then Jennifer Popen declined any further discussion.

Mrs. Harvey testified that that comment by Jennifer Popen was "another clear indication that it was Jennifer [Popen]" who had abused Kim. Mrs. Harvey said she conveyed that opinion to Mrs. Lo.

Mrs. Lo said she did not know who had caused Kim's injuries. She testified that was so despite Mrs. Harvey's testimony as to her belief that Jennifer Popen was the one who abused Kim and that she had informed Mrs. Lo of that belief.

One account related to Mrs. Lo was that Annals Popen abused Kim when drunk. Another was that "they suspected" Jennifer Popen was abusing Kim. In the light of Mrs. Lo's sources of information I can only conclude that "they" included Mrs. Harvey.

Mrs. Harvey did testify that she advised Mrs. Lo that she was "pretty sure" that Jennifer Popen was abusing Kim and that, regardless of any finding by the Court against Annals Popen, the Society should focus its attention on Jennifer Popen and only collaterally work with Annals Popen and his Probation Officer "because we were sure she was the one."

In the final analysis, the Society did not focus its attention on Jennifer Popen or on anyone.

Mrs. Kirby in her testimony voiced some similar intuitive suspicion of Jennifer Popen based on her observations. She said she stated those suspicions to Mrs. Archer, her supervisor. There was no firm evidence that she mentioned those suspicions to Mrs. Lo. Mrs. Kirby did testify that she believed she had discussed those suspicions with Mrs. Lo. Those suspicions entertained by Mrs. Kirby were in addition to any suspicions she had as to Annals Popen's involvement.

It would seem that Mrs. Lo did not really absorb the significance of all of this. As late as her recording under date May 6, 1976 she wrote:

> "I let Mr. Popen know at the present time my main concern is with him"

and went on to write about her encouragement of him

> "to work harder."

It was interesting to me to note that Mrs. Lo did not feel that her role included investigation to determine who had abused Kim. The rationale of that entirely escapes me.

She said she was there to help both parent and child. I can accept that as far as it goes. It does not go far enough. I can only wonder how she could help both parent and child unless she had some knowledge or belief as to who was abusing Kim and as to the reason for such abuse.

Mrs. Lo testified that Jennifer Popen would state that Annals Popen was responsible and he, in turn, would say that he was drinking and probably did it. Mrs. Lo did not go beyond that to inquire as to why Annals Popen felt he had "probably" done it. Mrs. Lo testified that Annals Popen did not admit that he had inflicted any specific injury upon Kim.

On March 29, 1976 Annals Popen appeared in the Court to be sentenced upon the charge under section 40 of The Child Welfare Act. Sentence was suspended for one year and he was placed on probation. In addition to terms that he be of good behaviour, report to a probation officer and appear in court when called upon, he was required to abstain totally from alcoholic beverages and to take treatment for alcoholism.

In addition to her visits with Kim's parents, Mrs. Lo was present when Kim visited with her parents in their home on a weekly basis for four weeks in April, 1976. Mrs. Lo observed the relationship of the child and parents during these visits. These visits were begun as a part of the normal procedure of the Society in preparation for the return of a child to the parents' home.

There was some confusing and conflicting testimony, but early in May, 1976, either on May 6 or May 7, Mrs. Harvey, Supervisor of the Family Services Department, Mrs. Archer, Supervisor of the Children's Services Department, Mrs. Kirby, the child care worker, and Mrs. Lo met at the Society's offices. Because of difficulties in the foster home created by Kim when she returned there after her visits to her parents' home, it was decided at that time that those visits should be discontinued. In her recording under date May 6, 1976, Mrs. Lo wrote:

> "The home visits have been proven to be very disruptive to Kim."

Mrs. Lo's impression of that meeting was that, in addition to the discussion leading to that decision, there was discussion as to when Kim would be returned to the care of her parents in their home. Mrs. Lo's impression was that the decision that Kim would be returned to her home had been made months before and all that remained to be decided in May 1976 was the timing of that return.

From the evidence of Mrs. Archer, Mrs. Kirby and Mrs. Harvey, I am satisfied that Mrs. Lo's impression of the subject matter of that discussion on May 6 or 7, 1976 was correct.

Mrs. Archer said she assumed that the decision to return Kim was made before Kim's first visit to her home on April 9, 1976. She said she was not a party to, nor was she consulted about that decision.

It was clear to me that within the Society it was accepted that the role of the Family Services Department was dominant to that of the Children's Services Department in any case where both departments were involved with the same family and where there might have been a difference of opinion between the personnel of the two departments. It seemed to be accepted that the Family Services Department had a broader perspective of the situation in the family and that the Children's Services Department was responsible only for any child of the family who was in the care of the Society.

That principle operated in Kim's case. It was accepted that the Family Services Department was responsible for any decision as to whether or when Kim would be returned to her parents.

Mrs. Kirby recalled a conversation with Mrs. Lo about the end of March, 1976 wherein Mrs. Lo informed her that efforts would be made to return Kim to her home by the end of May. As a result Mrs. Kirby and Mrs. Lo discussed how Kim would be integrated back into the home. With Mrs. Harvey they decided that it would be wise to begin visits by Kim to her parents' home. Jennifer Popen's pregnancy was a factor in the discussion and decision. Mrs. Kirby said that on May 7, 1976, the decision to return Kim had been made and it was just a matter of how that return was to be managed.

Mrs. Kirby was not consulted on the question as to whether Kim should be returned to her home. She was not a party to the decision. Indeed on February 19, 1976 she spoke against it in the meeting with Mrs. Harvey attended also by Mr. Carter and Police Constables Wyville and Charlton.

Mrs. Harvey testified that as early as February 19, 1976, the date of what I choose to call Mrs. Harvey's encounter with Mrs. Kirby, Mr. Carter and Police Constables Wyville and Charlton, she had decided or had plans to return Kim to her parents' home "eventually." I gathered that had been her intention virtually from the outset of Kim's case, formally, on August 31, 1975.

At that meeting on May 6 or 7, 1976, it was decided that Kim should be returned home before, rather than after, the birth of Jennifer Popen's next child whose birth was expected to occur early in July. The decision was that Kim would be returned home on May 27, 1976.

Thus the penultimate arc in what I have called the ring of tragedy surrounding Kim was formed.

The final arc in that ring of tragedy was the continued reliance of the Society, as represented by Mrs. Harvey, upon the abilities and skills of Mrs. Lo without meaningful instruction by Mrs. Harvey as to how Mrs. Lo should perform her duties. Mrs. Harvey was responsible for the lack of instruction to Mrs. Lo.

Mrs. Harvey acknowledged in her testimony that, in retrospect at least, she was bothered by the fact that, without any explanation apparent to her as she testified, she had not instructed or ordered Mrs. Lo to arrange for frequent medical examinations of Kim after her return to her parents' home. Without any intervening court order Kim remained in the care and custody of the Society after May 27, 1976 and it was within the power and control of the Society to insist upon such medical examinations.

By failing to arrange for such medical examinations the Society, as represented by Mrs. Harvey and Mrs. Lo, was remiss in its duty to protect Kim.

Such medical examinations would have served two purposes. They would have revealed any injury which Kim may have suffered. It is reasonable to assume that if Jennifer Popen had been advised that Kim was to be examined at intervals, she, Jennifer Popen, might not have injured Kim.

Even from her own testimony I gather that Mrs. Harvey was not specific in her instructions to Mrs. Lo. She merely instructed Mrs. Lo to watch very carefully for any bruise on or any change in Kim. That was not sufficient instruction to a novice such as Mrs. Lo. Mrs. Harvey did not even instruct Mrs. Lo to undress Kim to enable a complete examination of Kim's body to detect even those injuries or indicia of abuse that might have been apparent to one as unskilled and inexperienced as Mrs. Lo. There was no reference by Mrs. Harvey to the possibility of sexual or emotional abuse or nutritional deprivation and the indicia thereof.

Such a visual examination by Mrs. Lo or any social worker could not replace an examination by a medical doctor. But it would be better than no examination.

Mrs. Harvey was remiss in not instructing Mrs. Lo to make such examinations of Kim.

Mrs. Harvey, in her statement to the Investigators for the Inquiry and in her evidence, seemed to place some reliance upon the fact that, as arranged by the Society, Jennifer Popen and Annals Popen were attending the Parent Effectiveness Training Course. That Course was designed to teach parenting skills. It was not directly related to the prevention of child abuse. Even Mrs. Harvey did not say that she felt that the Course would be of particular benefit to Jennifer Popen and Annals Popen and thus to Kim.

By the time of the meeting on May 6 or 7, 1976, only two, at the most, sessions of that Course had been conducted. They were on April 26 and May 3, 1976. There is no clear evidence that Annals Popen and Jennifer Popen or either of them had attended either or both of those sessions or had derived any benefit therefrom if they did attend. Mrs. Harvey's evidence indicates that Annals Popen and Jennifer Popen were having some difficulty in coping with the Course and had missed some of the sessions when Jennifer Popen was not feeling well. That is similar to the evidence of Mrs. Maughan, the volunteer Probation Officer.

Until Kim's return home on May 27, 1976, Mrs. Kirby had maintained a file containing a record of the handling of Kim's case by the Children's Services Department of the Society and of her visits with her parents. To all intents and purposes that record was completed by Mrs. Kirby as of May 27, 1976. At some later time, Mrs. Harvey dictated, for transcription in that record, a summary of what appeared in the Family Services Department's file from April 15, 1976 to August 11, 1976. Mrs. Kirby had intended to close the Children's Services Department's file on Kim as of May 27, 1976, but Mrs. Archer, her supervisor in the Children's Services Department, informed her that that was wrong procedurally and that that file had to be maintained as an open file so long as Kim remained a ward of the Society.

Mrs. Harvey's evidence was that it had been the practice of the Society to close a file once the child was returned home. She testified that she was not aware of any error in that procedure until sometime in 1977 when Mr. Stephen Charko, Supervisor of Field Services, Child Welfare Branch of the Ministry of Community and Social Services, drew it to her attention. As a result, she dictated into the Child Care File the summary of what was recorded in the Family Services file for the period from April 15, 1976 to Kim's death.

It is not clear to me when Mrs. Archer informed Mrs. Kirby of this or when Mr. Charko informed Mrs. Harvey of it.

It is clear that the Society had no well defined and understood procedures as to maintenance of files and recordings in particular situations. Mrs. Harvey and Mrs. Kirby had one understanding; Mrs. Archer had another. It would seem that Mrs. Archer's understanding as to the correct procedure was that required by the Ministry of Community and Social Services as represented by Mr. Charko.

Mr. Brouwer and Mrs. Maughan testified as to the involvement of the Ministry of Correctional Services with the Popen family after March 29, 1976. Nine of the monthly report sheets prepared by Mrs. Maughan were presented as exhibits.

The Ministry of Correctional Services, through Mr. Brouwer, first became involved with the Popen family on February 23, 1976 when the presentence report was requested following Annals Popen's plea of guilty to the charge under section 40 of The Child Welfare Act. The Court's request was assigned to Mr. Brouwer.

That report was considered when sentence was imposed on March 29, 1976. It made reference to Annals Popen's problem with alcohol, but indicated that his attendance at Alcoholics Anonymous and the involvement of the Society with Kim's parents were leading them to a more positive attitude with reference to their problems. The source of that information is not stated in the pre-sentence report. The report referred to similar feelings expressed by Mrs. Lo and to the eight-week Parent Effectiveness Training Course to be attended by Annals Popen and Jennifer Popen commencing late in April 1976.

It would seem that in writing the pre-sentence report Mr. Brouwer relied to a great extent upon Mrs. Lo's comments and assessment of the situation. When one considers Mrs. Lo's lack of training and experience and her slight contact with the Popen family to that time, it is unfortunate that she was the only member of the Society's staff whom Mr. Brouwer approached. Mr. Carter might have been a source of greater and more reliable information.

Mrs. Lo's recording in the Society's records and her testimony upon the Inquiry indicate that her only contact with the Popen family prior to March 29, 1976 consisted of visits with Jennifer Popen on February 27 and March 4 and with both Annals Popen and Jennifer Popen on March 18, 1976. Thus, at least until then, most of Mrs. Lo's contact was with Jennifer Popen whose capacity to tell stories and mislead people was demonstrated upon the Inquiry.

If I understand the evidence correctly, Mr. Brouwer's only discussion with Mrs. Lo with reference to the preparation of the pre-sentence report was on March 5, 1976. That was nine days after she was assigned to the case and before she had met Annals Popen who was the subject of the pre-sentence report.

As Mr. Brouwer put it in his evidence, Mrs. Lo told him "not that much." The pre-sentence report does not indicate that when he wrote it he felt that what Mrs. Lo told him was "not that much."

In the paragraph of the pre-sentence report referring to the Society and Mrs. Lo there seems to be an air of optimism resulting from Annals Popen's contact with the Society and from his intended enrolment in the Parent Effectiveness Training Course.

It is unfortunate that Mr. Brouwer did not persist in any effort he may have made to speak with Police Constable Wyville. That is particularly so in the light of Mrs. Lo's having told him "not that much" and his having no source of current information totally independent of Annals Popen and Jennifer Popen.

The pre-sentence report can be no better than its sources of information. This one leaned heavily on unreliable sources, Annals Popen and Jennifer Popen, and did not avail itself of what I would believe to be more reliable sources, Police Constable Wyville and Mr. Carter.

If Mrs. Lo told him "not that much," Mr. Brouwer should have interviewed others at the Society. Mrs. Lo did tell him she had just been assigned to the case. He should have spoken to her predecesor, Mr. Carter.

Mr. Brouwer in preparing the pre-sentence report had access to the brief prepared by Police Constable Wyville for the Crown Attorney. That brief clearly shows that Mr. Carter was involved in the case. Mr. Brouwer's failure to interview Mr. Carter or anyone else at the Society and his failure to interview any police officer, cause me to doubt the validity and value of the pre-sentence report apart from its inclusion of Dr. Curtin's report. Mr. Brouwer did not even try to interview Mr. Carter and in his testimony he acknowledged he was not really certain he had tried to interview any police officer.

On the basis of Mr. Lang's evidence that the sentence awarded to Annals Popen caused him, as Crown Attorney, no concern, it would seem that, whatever my assessment of the pre-sentence report and its basis, an appropriate result was obtained insofar as the sentence imposed upon Annals Popen was concerned. That is not to say that the result was an appropriate means of protecting Kim.

The pre-sentence report contained Jennifer Popen's explanation for the injury that led to Kim's first hospitalization with a broken arm in March 1975. That explanation was that Kim had merely rolled over in her crib and fell from it because the side was down. That was a false explanation. The transcript of the trial proceedings in the Court shows that Judge Nighswander was aware of the other explanation for that injury given by Jennifer Popen to Dr. Singh, that is that it occurred while she was dressing Kim. Judge Nighswander did not accept that explanation contained in the pre-sentence report or other explanations given for other injuries.

Attached to the pre-sentence report was a report on Annals Popen dated March 19, 1976 prepared by Dr. Curtin. That report indicates that Dr. Curtin found it difficult to obtain any detailed information. While Dr. Curtin suggested that Annals Popen's attendance at Alcoholics Anonymous and the Parent Effectiveness Training Course and the willingness of the parents to grant to the Society and The Lambton Health Unit access to their home to check on Kim would minimize the danger of abuse of Kim in the future, he continued as follows:

> "I am really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen. He denies ever having been abused himself as a child and in fact, my enquiries from him yield such little abnormality that I wonder about his reliability as an informant. I would think therefore, that a more accurate assessment of his emotional state will likely result from objective enquiries rather than from any enquiries I might make from himself or his wife.
>
> In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it."

Dr. Curtin attached to his report a copy of a consultation note he had made following an interview on October 22, 1975 with Jennifer Popen who had been referred to him by Dr. Gamula. I presume this followed her visit to Dr. Gamula in respect of her temper. Two paragraphs in that consultation report were repeated by Dr. Curtin in his report of September 22, 1977 to Mr. Higgins. They read as follows:

> "Mrs. Popen impresses me as being a somewhat unreliable informant and she appears rather guarded and evasive in the interview situation. She is not able to give me any explanation that seems adequate or feasible to me with regard to how her baby got hurt physically. I find it very difficult to communicate meaningfully with Mrs. Popen and she seems poorly able to think in abstract terms. I wonder about her intellectual level, her degree of formal education or language difficulty, as contributing to the difficulty in communication."..."In brief then all I can say is that I was not impressed as to her degree of reliability as an informant and I would consider her an emotionally deprived person. She does not impress me as being a very stable person emotionally. None of the facts of the case are available to me and therefore there is little else I can say here."

Although Mrs. Lo was aware of its existence and was in Court when it was considered on March 29, 1976, she made no effort to see the pre-sentence report and the reports and consultation note attached to it.

In March 1976 the Society had available to it Dr. Curtin's assessment of both of Kim's parents and particularly his concern as to their reliability as informants, his inability to express any opinion as to the likelihood of any repetition of abuse of Kim and his assessment of Jennifer Popen as being emotionally deprived and not very stable emotionally.

From time to time during the Inquiry, counsel or witnesses used the expression "danger signal" or some similar expression with reference to circumstances which might be indicia of situations which might become incidents of child abuse. With knowledge of what had occurred and what injuries Kim had suffered and the suspicions which the Society's personnel themselves testified they had as to Jennifer Popen's involvement in Kim's injuries, that report by Dr. Curtin must certainly have been a danger signal.

It should have been seen and recognized as such by the Society.

Had anyone from the Society seen fit to read the complete pre-sentence report, any suspicion as to Jennifer Popen's involvement in the abuse of Kim might have been heightened. Someone at the Society might have then seen fit to undertake some investigation to resolve, one way or another, any such suspicion or doubt. Thus the whole plan for the management of Kim's care by the Society, if indeed there was any plan for her care formulated by the Society, might have been amended and unfortunate decisions might not have been made.

Mrs. Lo and perhaps Mr. Carter and thus the Society were aware of the pre-sentence report. The Society could and should have sought access to it and read it.

If Mrs. Harvey was giving Mrs. Lo the intensive supervision she said she intended to give her Mrs. Harvey could and should have been aware of the contents of and should have read the pre-sentence report and its attachments. There is no evidence to indicate that Mrs. Harvey was aware of the contents of or read the pre-sentence report.

I am not satisfied that Mrs. Lo read it. She testified that she did obtain some information about it and Dr. Curtin's report from Mr. Brouwer, but her recording in the Society's files does not disclose that fact or the nature of the information.

Mr. Brouwer, author of the pre-sentence report, was assigned to supervise Annals Popen's probation. He was assisted by Mrs. Catherine Maughan.

Mr. Brouwer met both Annals Popen and Jennifer Popen in his office in the courthouse in Sarnia on February 23, 1976. On March 4, 1976, he interviewed Jennifer Popen alone in her home. He did not then see Kim. He was told she was not at home.

As to his meetings with Annals Popen and Jennifer Popen, Mr. Brouwer testified, as he wrote in the pre-sentence report, that Annals Popen seemed to be very withdrawn and very quiet. He said that most often Jennifer Popen would answer questions addressed to Annals Popen. He said that when he spoke with Annals Popen in the absence of Jennifer Popen he found that, while not unco-operative, Annals Popen was very hesitant in his responses and had difficulty expressing himself.

Mr. Brouwer went on to say that the answers given by Jennifer Popen and Annals Popen were very vague and, as a result, Mr. Brouwer was unable to form any opinion as to who had abused Kim. He said it appeared it may have been Annals Popen because of his drinking, but he was not certain.

Mr. Brouwer did have access to the brief prepared by Police Constable Wyville for the Crown Attorney; so he was aware of the various prior incidents of injury to Kim. He said Jennifer Popen told him that Kim's broken arm of March 22, 1975 had been caused by an accidental fall from her crib. He said he accepted that explanation and made no effort to check the truth of that explanation.

As to Kim's injuries discovered when she was admitted to hospital on August 31, 1975, he said:

> "[Annals Popen] could not remember anything at all about that incident. He had been drinking and although he pleaded guilty he told me he was told by others that he had done that."

In his testimony upon the Inquiry, Mr. Brouwer made specific reference to the assessment set forth on the final page of the pre-sentence report. In that assessment he had stated his difficulty in determining if Annals Popen's problems were due only to his drinking or if there were "other underlying causes."

Had anyone from the Society seen fit to read the pre-sentence report, they would have been alerted to the probability that all was not as it might seem on the surface and that other areas might merit investigation or inquiry by the Society. Such investigation or inquiry by the Society would have been necessary in performance of its duty to protect Kim, who had been found by Judge Nighswander to be a child in need of protection and who had been placed by him in its care and custody for a period of six months.

In addition to seeing Annals Popen on March 29, 1976, Mr. Brouwer saw him, during Kim's lifetime, on April 21, May 21 and June 18, 1976. All of these visits were in the Ministry's offices. He said that on all occasions Annals Popen spoke of his love for Kim.

Mr. Brouwer was told by Jennifer Popen, Annals Popen and Mr. Vandenburghe that Annals Popen was no longer drinking and was responding quite well in the programme of Alcoholics Anonymous.

Mrs. Lo was at the Popen home when Mr. Brouwer arrived there on March 4, 1976. He saw her in her office on March 5, 1976, but he did not seek permission to examine any of the Society's files with reference to Kim or her family. He said the Society's file was there and Mrs. Lo used it in replying to his questions. He said she seemed hesitant to give him information, but did answer all of his questions.

As to his meeting with Mrs. Lo on March 5, 1976, Mr. Brouwer, when asked what Mrs. Lo told him, replied:

> "Not that much. She had not seen Annals Popen at that time."

He went on to say that Mrs. Lo told him she was arranging for Jennifer Popen and Annals Popen to take a Parent Effectiveness Training Course and that Annals Popen had attended Alcoholics Anonymous meetings for about three and a half months. He said Mrs. Lo told him that Annals Popen wanted Kim to be returned to her family home.

Mr. Brouwer testified that Mrs. Lo

> "indicated to [him] too that initially everyone [at the Society] thought Jennifer Popen was the one who had abused [Kim]."

He went on to say that Mrs. Lo indicated that, as a result of the proceedings in the Court, the Society assumed Annals Popen, not Jennifer Popen, had abused Kim. He said the pre-sentence report was prepared on that same basis.

Mr. Brouwer also spoke with Mr. and Mrs. Vandenburghe before writing the pre-sentence report.

The Ministry of Correctional Services arranged for an appointment for Annals Popen to see Dr. Curtin. Dr. Curtin reported thereon by letter dated March 19, 1976, attached to the pre-sentence report. I have already mentioned that letter.

Mr. Brouwer said that shortly after Kim's return to her home on May 27, 1976, he telephoned Mrs. Lo to inquire as to how the parents were progressing in the Parent Effectiveness Training Course. He said Mrs. Lo told him then that the Society's involvement with the family was decreasing and that the Parent Effectiveness Training Course was completed or almost completed. He said Mrs. Lo did not indicate that her visits to the Popen home would be fewer.

Mr. Brouwer said he made that telephone call out of a continuing concern for Kim's welfare.

It is of interest to note that this communication between agencies or departments originated with the Probation Service. It was not initiated by the Society. Almost without exception any communication between another agency and the Society which was mentioned in any way upon the Inquiry originated with the other agency. That seems to indicate a rather insular attitude on the part of the Society. In the face of such an attitude it seems to me that it ill behoves the Society's personnel to be critical, as some were in their testimony upon the Inquiry, that others did not keep the Society informed of events.

Mr. Brouwer said that on July 26, 1976, Mrs. Lo telephoned him to advise him that the involvement of the Society would cease. This is the lone instance I recall wherein a fresh communication with another agency or governmental department was originated by the Society. It was the exception to the insular attitude. It was of questionable value.

Mr. Brouwer testified that in that conversation Mrs. Lo expressed concern about the case. He testified that she told him that she felt both Annals Popen and Jennifer Popen were not truthful with her and were avoiding or not responding to her questions. He said that he read to Mrs. Lo the import of some portions of Mrs. Maughan's report as to her contacts with the Popen family in June, 1976.

As summarized by Mr. Brouwer in his evidence those portions related to Annals Popen and Jennifer Popen having taken the Parent Effectiveness Training Course, but went on to state that by their answers to Mrs. Maughan's questions they indicated that they had not fully absorbed it and did not understand some basic points of the Course. Other portions of Mrs. Maughan's report read to Mrs. Lo set forth improvements in Kim's sleeping habits as related to her by Annals Popen and Jennifer Popen.

Mr. Brouwer said he mentioned these matters to Mrs. Lo to learn her opinion of them. He said that Mrs. Lo told him that Kim's behaviour might not be as the parents reported to Mrs. Maughan and that the parents were making up stories.

Nonetheless Mrs. Lo told him the Society's involvement with the family was ceasing because the order of the Court was to expire in August.

Mr. Brouwer said that, while he had concern to insure that Kim was not abused again, his primary concern was with enforcement of the specific terms of the Probation Order with respect to Annals Popen. Thus, and because of the involvement of the Society and Alcoholics Anonymous, he felt that it would be sufficient for Annals Popen to report to him at his office on a monthly basis and he relied on the Society to conduct any visits to the home and to "keep an eye on [Kim]."

I think Mr. Brouwer correctly assessed the role of the Probation Service when he said he dealt with Annals Popen, that Jennifer Popen was not under its supervision, but that the family was, indirectly, a responsibility of the Probation Service, but that the Society had a much heavier responsibility for Kim and was the dominant agency in the home.

On June 15, 1976, Mr. Brouwer transferred Annals Popen's file to Mrs. Maughan for day-to-day service, but he retained responsibility for it. He felt that by so doing his Ministry's supervision would be increased to meet the fact of Kim's return home and a decreasing involvement by the Society.

That latter reason must have been formulated in retrospect because he was not aware until Mrs. Lo's telephone call of July 26, 1976 that the Society's involvement would decrease.

He said that because of the other cases assigned to him he was not able to give the "more extensive involvement" that Mrs. Maughan would provide.

Thus it seems that the Ministry of Correctional Services too lacked personnel to provide, other than through a volunteer, the supervision which the nature of the case required.

I cannot help but note and mention the conjunction of events that resulted in Kim's case being handled for the Society by Mrs. Lo who, for all real intents and purposes, was not a trained social worker, who after only minimal and brief experience none of which related to child abuse, was given responsibility for her first major case, and, for the Ministry of Correctional Services, by Mrs. Maughan, a community volunteer then only recently recruited by the Ministry who too was given a case of this magnitude as her first case. She was sworn in as a volunteer probation worker in June 1976 after attending five evening training classes. Annals Popen was her first and, at that time, her only probationer.

It would seem that at this time Kim's was the only case of child abuse recorded as such in the Society and Annals Popen's probably was the only instance of probation in the County of Lambton involving child abuse. There were few, if any, recorded instances of child abuse in the County of Lambton during the whole period of Kim's life. The various witnesses whose testimony touched upon that issue did not have a common basis of definition of child abuse.

Thus Kim's fate to some large degree was entrusted, in one instance directly by the Ministry of Correctional Services and in another by an essentially public agency funded to considerable degree and supposedly supervised, inspected and advised by the Ministry of Community and Social Services, to two workers with the limited training and experience which I have mentioned.

I am not to be taken in that reference to be in any way critical of Mrs. Maughan as a volunteer or as a person. I was much impressed by Mrs. Maughan. I said so at the conclusion of her testimony. I believe her to be a concerned and involved and caring member of her community. She had talents to share with and for that community. She chose a worthwhile way in which to share those talents.

Nor am I critical of the volunteer programme or service. I think that with volunteers such as Mrs. Maughan it is a very useful and worthwhile adjunct to the Ministry.

I accept, as a correct assessment of Mrs. Maughan, Mr. Brouwer's testimony that

> "She is an excellent worker. I believe she is one of our -- if not the best volunteer worker with our volunteer programme."

That appears also to have been accepted by the Ministry of Correctional Services. By the time Mrs. Maughan testified upon the Inquiry on July 6, 1978, she had been appointed co-ordinator of the volunteer programme of the Probation Service of that Ministry in the County of Lambton.

I make this reference to Mrs. Lo and Mrs. Maughan in this context because I am left to wonder as to whether anything to do with Kim in Sarnia in 1976 might have been different or have had different results if either or both Mrs. Lo and Mrs. Maughan had been more highly trained and more experienced in cases such as Kim's.

As required by Mr. Brouwer, Mrs. Maughan prepared and gave to him each month a written report as to her contacts with Kim's family during the preceding month. Her reports upon contacts during June, July and August, 1976 were filed as exhibits, as were her reports for subsequent months. In addition to providing those reports Mrs. Maughan met frequently with Mr. Brouwer to discuss the case. In none of these reports or discussions was there any mention of any injury to Kim occurring during the period. Mrs. Maughan saw no injury of any significance to her and none such was mentioned to her.

I think the first sentence of the final paragraph of Mrs. Maughan's written report as to contacts in the month of June, 1976 is significant. It reads as follows:

> "According to both Mr. and Mrs. P. the situation is so devoid of problems as to seem a little unrealistic."

It bears out my high regard for Mrs. Maughan's talents. While lacking the formal training of Dr. Curtin she was assessing the situation much as he had done. As she said in her testimony upon the Inquiry

> "in view of the past history, there had to be some adjustments to be made and they had to be having some problems, but they were not admitting any."

I am aware that, from the outset of her involvement with the case, Mrs. Maughan knew of Dr. Curtin's report attached to the pre-sentence report.

This report by Mrs. Maughan was a source of information easily available to the Society early in July 1976 if they had asked for it. In fact much, if not all, of the information was given to the Society, in the person of Mrs. Lo by Mr. Brouwer on July 26, 1976. That was the sole instance of the Society's personnel initiating an approach to another agency in respect of Kim. It received an immediate favourable and helpful response.

That information does not appear to have affected any decision by the Society with reference to Kim. Neither it nor her call to Mr. Brouwer is mentioned in the recording made by Mrs. Lo in the file of the Family Services Department of the Society. Neither Mrs. Lo nor Mrs. Harvey indicated in testimony that the conversation between Mrs. Lo and Mr. Brouwer was discussed by them at the Society.

In Mrs. Lo's recording there is a paragraph specifically relating to other events of July 26, 1976 as observed by her. They appear to be of less significance than her conversation with Mr. Brouwer. To my mind that makes all the more glaring her failure to record the conversation with Mr. Brouwer and the contents of Mrs. Maughan's report.

Similarly the latter portion of Mrs. Maughan's written report as to contacts in July, 1976 is of interest. She wrote as follows:

> "July 18, 1976. The atmosphere was so charged with resentment and anxiety that I confronted the Popens immediately on the obvious change in feeling from our previous contact. After an attempt to ascribe the change to trivialities, they decided to trust me with their feelings which I feel are totally justified. Mrs. P.'s treatment by a representative from another community agency is humiliating to a proud woman who has committed no crime and is not being shown the courtesy she is entitled to. I encouraged her to protest the incident but she is reluctant to risk any trouble. This had upset Mr. Popen also and had damaged the rapport they had established with me, as well. However, the release of their feelings regarding the episode and my reponse to the feelings of injustice had acted as a catalyst and we were really opening up areas of opinion and true feeling that were most helpful to me when unexpected visitors arrived. Hopefully we can pick this up again.
> The client is fulfilling the terms of his probation with no difficulty."

Unfortunately that written report was not available to Mr. Brouwer when he spoke with Mrs. Lo on July 26, 1976. Nor is there any evidence that Mrs. Maughan had spoken to him about the incident or that any of the information was passed to the Society.

That may be of some significance because while Mrs. Lo, in her recording in the file of the Family Services Department of the Society, did not make mention of it, she did mention it in her testimony upon the Inquiry. When asked about Mr. Vandenberghe's evidence to the effect that Jennifer Popen despised Mrs. Lo and resented her visits and questions, Mrs. Lo said that she had not felt such resentment. She then went on to say that during one of the visits recorded by her for the period from July 7 to 23, 1976, Jennifer Popen had given the impression that she was not happy with the Probation Officer, Mrs. Maughan.

Thus, at about the same time, Jennifer Popen was commenting to both Mrs. Lo and Mrs. Maughan upon her relationship or experience with the other. Neither Mrs. Lo nor Mrs. Maughan mentioned it to the other. Neither mentioned it to her superior. Mrs. Maughan did record it in her report at the end of July. Mr. Brouwer did not see that report before Kim died. He was on vacation at about the time it was prepared and did not return until after Kim's death. There is no evidence to indicate that, in Mr. Brouwer's absence, any official of the Probation Services took any action with reference to that report before Kim's death. Mrs. Lo's recording does not indicate any comment by Jennifer Popen more critical of Mrs. Maughan than of Mrs. Lo.

This would appear to be another instance of lack of communication, at least, between two public officials, in two different agencies or departments of government concerned with and providing service to the same family.

This seems to me to be unfortunate. Mrs. Maughan clearly in her report gave sympathy and encouragement to Jennifer Popen in her criticism of Mrs. Lo and Mrs. Lo's conduct. Jennifer Popen's criticism of Mrs. Maughan was not recorded by Mrs. Lo in the file of the Family Services Department of the Society as a separate and distinct event. However, when Mrs. Lo testified upon the Inquiry she did not indicate that she had in any way attempted to defend Mrs. Maughan in the face of Jennifer Popen's criticism.

It seems to me that in a sense Jennifer Popen was behaving toward Mrs. Lo and Mrs. Maughan, and, in a somewhat similar way, toward Mrs. Kuly as well, in much the same way that Kim was alleged to behave towards her parents. She played one against the other. Mrs. Lo recorded that comment by Jennifer Popen with reference to Kim in her dictation for the period from June 17 to July 6, 1976.

One must wonder if persons more highly trained and experienced than Mrs. Lo and Mrs. Maughan would have recognized what was happening and thus would have contacted the other to discuss how to deal with Jennifer Popen's tactic and the significance, if any, to be attached to it.

In fairness to Mrs. Maughan it must be pointed out that her involvement with Annals Popen's probation during Kim's lifetime was for a period of only about seven weeks. Her first visit to the Popen home was on June 20, 1976. Her last visit before Kim's death was on August 8, 1976. Mrs. Maughan was in the Popen home on only four occasions during Kim's life, on June 20, 1976, July 4 and 18, 1976 and August 8, 1976, and spoke by telephone with Annals Popen on only two occasions, once prior to June 20 and once on July 6, 1976. She also spoke to Jennifer Popen by telephone once prior to June 20, 1976.

In fairness to Mr. Brouwer, his contact with Annals Popen was brief. It was initially in connection with preparation of the pre-sentence report after the finding of guilt on February 23, 1976. Later he was assigned to provide personal supervision of Annals Popen's probation from March 29, 1976 until June 18, 1976 and thereafter indirect supervision of his probation through Mrs. Maughan. Apart from contact with Annals Popen in connection with preparation of the pre-sentence report, Mr. Brouwer spoke with Annals Popen on only four occasions during Kim's life, on March 29, the date of sentencing, April 21, May 21 and June 18, 1976. That last occasion was when Mrs. Maughan was given direct responsibility for management of Annals Popen's probation under Mr. Brouwer's supervision. He did have the telephone call from Mrs. Lo on July 26, 1976 in which she expressed concern as to the state of affairs in the Popen home.

In preparing the pre-sentence report in March, 1976, Mr. Brouwer relied on the various sources set out in the pre-sentence report. It is to be noted that Mr. Carter was not such a source nor was any police officer. Mr. Brouwer accepted that Annals Popen was responsible for Kim's injuries because he had entered the plea of guilty to the charge under section 40 of The Child Welfare Act. Mr. Brouwer did this even though Annals Popen told him that in entering that plea he, Annals Popen, did not remember what had happened and relied on Jennifer Popen's statement to him that he had injured Kim. Mr. Brouwer did this even though Mrs. Lo had told him of the suspicion in the minds of the Society's personnel that Jennifer Popen was abusing Kim.

Nowhere in the pre-sentence report is there any mention of the equivocation of Annals Popen's admission. Nowhere in the pre-sentence report is there any mention of the suspicion of the Society's personnel as to Jennifer Popen's involvement with abuse of Kim.

It would seem that Mr. Brouwer, like others, including the Society's personnel, overlooked the exact nature of the charge to which Annals Popen had entered the plea of guilty. Annals Popen did not plead guilty to having assaulted Kim. He did plead guilty to the charge that having custody of Kim he unlawfully did fail to protect her, contrary to section 40(1) of The Child Welfare Act.

Mrs. Maughan's reports do not indicate that she noticed any injury to or mistreatment of Kim at any time and none of the testimony upon the Inquiry indicated that Mrs. Maughan had observed any injury to or mistreatment of Kim. She saw Kim on all but one of her visits to the Popen home.

On July 4, 1976, Annals Popen did point out to Mrs. Maughan some slight bruises on the edge of Kim's cheeks caused, he said, by Kim pinching herself. Mrs. Maughan testified that Annals Popen was concerned that even a slight injury such as that might lead to Kim's removal by the Society. She said she reassured him that he should not worry. She testified she had not noticed the bruises until he drew her attention to them.

Mr. Brouwer testified that he had no cause for concern that Kim was being abused during the period of Annals Popen's probation. He said he had specifically asked Mrs. Maughan to be observant of the treatment of Kim in her home.

Mr. Brouwer was candid in his testimony upon the Inquiry to acknowledge that, in retrospect, if he were to be involved in another case such as that involving Annals Popen, Kim and Jennifer Popen "there would be more contact" although he was not sure how much more there could have been in the relatively short period of time.

The Probation Service of the Ministry of Correctional Services quite properly arranged for Dr. J. J. Curtin to examine Annals Popen prior to the preparation of the pre-sentence report. By good fortune Dr. Curtin had previously interviewed Jennifer Popen and had forwarded a consultation note to the physician who had referred her to Dr. Curtin. Dr. Curtin's report upon Annals Popen forwarded to the Probation Service indicates that a copy of that consultation report was attached thereto.

Unfortunately, no one recognized the limitations that Dr. Curtin so clearly set forth in his report. No one endeavoured to make or authorized Dr. Curtin to make the objective inquiries or observations or psychological testing which he felt would be necessary to provide a more accurate assessment of Annals Popen and, it would seem, of Jennifer Popen. Clearly, Dr. Curtin felt that an accurate assessment could not be based on inquiries made of Annals Popen and Jennifer Popen.

Mr. Brouwer certainly did not recognize Dr. Curtin's caution as to the value of his report. Mr. Brouwer regarded consumption of alcoholic beverages as Annals Popen's major problem. He felt that Annals Popen was coping with that problem; so Mr. Brouwer accepted Dr. Curtin's statement that if Annals Popen were to stay totally away from alcohol and go to some course the danger of further abuse to Kim would be minimized.

In summary, The Probation Service did well to have Annals Popen examined by Dr. Curtin. As an unexpected bonus he gave them some comments upon

Jennifer Popen. But the Probation Service did not use Dr. Curtin's report to the maximum advantage to ensure that those reponsible for Kim's care and protection, the Society, were specifically informed of Dr. Curtin's report and thus enabled to act appropriately to ensure Kim's safety in the future.

Mr. Brouwer acknowledged that the Probation Service had an indirect concern for Kim's welfare. Therefore, he should have seen to it that information he obtained which might have affected her safety was given to the Society even though they failed to ask for it.

To his credit, Mr. Brouwer did, in the final paragraph of the pre-sentence report, write:

> "It is difficult to determine whether the offender's problems are due only to his drinking, or whether there are other underlying causes. If his problems are due to alcohol alone, then it would seem that his abstaining from alcohol would minimize a recurrence of this type of offence. This offender could well benefit from a period of supervision as an avenue of directing him into continued involvement with the A.A. and family counselling."

Clearly Mr. Brouwer acknowledged that he was uncertain as to the cause of the problems. He was uncertain whether alcohol was the sole cause or whether there were other causes.

Unfortunately, the Probation Service did not pursue the other inquiries or observations suggested by Dr. Curtin as possible means to obtain a more accurate assessment of Kim's parents. The Probation Service did not commission any psychological testing nor did the Society who, while obviously aware of the existence of the pre-sentence report, had not seen it and had not sought a copy of it. Mrs. Lo was in the Court on March 29, 1976 when Annals Popen was sentenced and the pre-sentence report was discussed, but, on the basis of her recording, she misunderstood or misconstrued what she heard.

The Society did not take any advantage at all of Dr. Curtin's report because no one from the Society saw fit to ask to read the pre-sentence report. There is no real reference to it in the recording in the Society files.

Mr. Carter's recording in the Society's file for the period from September 1, 1975 to February 29, 1976 does state that the judgement of the Court on February 25, 1976 placed Kim in the care of the Society for six months:

> "plus the proviso that Mr. Popen obtain psychiatric help and both parents attended (sic) the Parent Education Course (sic) at Lambton College and care of weekly supervision in their home by the Children's Aid Society and all future visits of Kim to them shall be in their home under the Children's Aid Society worker's supervision."

When reviewed against the transcript of the Court proceedings on February 25, 1976 and the endorsement of the order of the Court upon its record that day, that summary by Mr. Carter in the Society's files is, at best, inadequate and inaccurate.

Nowhere in the reasons for judgement given by Judge Nighswander is there a "proviso that Mr. Popen obtain psychiatric help and both parents attended (sic) the Parent Education Course (sic)" nor is there any reference to the Society's supervision of the Popen home weekly or of Kim's visits there.

Nowhere in Mr. Carter's recording is there reference to Judge Nighswander's expressions of concern as to the time required to ensure Kim's safety in her home and as to the absence of evidence to show what Annals Popen had done about his alcohol problem.

An especially important omission is that Mr. Carter did not note Judge Nighswander's statement:

> "I [Judge Nighswander] am definitely going to note that he [Annals Popen] must give evidence that he has done something and

> that it is succeeding, before the Court will permit the child to return to its parents."

Notwithstanding Judge Nighswander's testimony upon the Inquiry, that statement seems to me to have been sufficient to impose upon the Society in this instance, regardless of any other procedure in any other case, an obligation of courtesy at least, if not of law, to return to the Court for permission to return Kim to her home.

Nowhere in Mr. Carter's recording is there reference to the doubts expressed by Judge Nighswander as to the failure of the evidence as to Kim's injuries to be consistent with the evidence as to the parents' explanation for those injuries. It is clear that Judge Nighswander was not satisfied that the injuries were caused in the ways suggested by the parents' evidence and explanations.

Nowhere in Mr. Carter's recording is there reference to Judge Nighswander's terse dismissal of the submission by the Society, agreeable to the parents, that two months' wardship would be sufficient. He made Kim a ward of the Society for six months.

A further recording by Mrs. Lo purports to reflect the nature of the proceedings in the Court on March 29, 1976. That recording is as follows:

> "The Popen's were in court on marginal date. Mr. Popen again pleaded guilty to the charge of neglecting to protect his child. Due to the positive results of psychiatry (sic) assessment it would indicate that Mr. Popen was not in need of psychiatric treatment. Due to his involvement with A.A. and apparent intention to enroll(sic) in the Parent Effectiveness Training Course, Mr. Popen was put on probation and sentence was suspended for one year. However, if he violates his probation, he will face 6 months to 1 year in jail."

That recording is entirely misleading and inaccurate. Upon reading Dr. Curtin's report attached to the pre-sentence report it is clear to me that there were no "positive results of psychiatr[ic] assessment [to] indicate that Mr. Popen was not in need of psychiatric treatment."

Dr. Curtin in his report of March 19, 1976 wrote as follows:

> "Mr. Popen has told me the following things, which undoubtedly will minimize the danger of the child being harmed in the future, namely he has stopped drinking and has just recently started going to Alcoholics Anonymous. Mrs. Harvey is setting up some type of course across from St. Peter's Church for both he and his wife to attend. He and his wife are perfectly agreeable that the Public Health Nurse and the Children's Aid visit their home any time in the future to check their treatment of their child. Even though all these things would surely minimize the danger in the future I am really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen. He denies ever having been abused himself as a child and in fact, my enquiries from him yield such little abnormality that I wonder about his reliability as an informant. I would think therefore, that a more accurate assessment of his emotional state will likely result from objective enquiries rather than from any enquiries I might make from himself or his wife.
>
> In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it.
>
> In summary then, if Mr. Popen stays totally away from alcohol and attends whatever courses Mrs. Harvey, the Public Health Nurse (sic) might set up, and Parents' Anonymous, if a branch of this were available locally, it would surely minimize the danger of the child being battered in the future. If Judge Nighswander decided to put Mr. Popen on probation I think this too, would be therapeutic. I cannot see

> where attending a psychiatrist would be of any benefit. I think to get a more accurate assessment it would need to be done by objective observation or possibly through psychological testing. I hope this assessment may be of some value."

It would seem that Mrs. Lo could find "positive results of psychiatr[ic] assessment" only in the sentence "I cannot see where attending a psychiatrist would be of any benefit." To me, in the context in which that sentence appears, that too is a negative not a positive result. It is a statement that psychiatry would not be helpful, but some other approaches might provide a more accurate assessment of Annals Popen and the situation in general. Dr. Curtin in his report said only that Annals Popen's abstaining from alcohol and his attending courses would minimize the likelihood of a recurrence of abuse of Kim.

From Mrs. Lo's recording in the Society's files, I am satisfied she heard at least portions of Dr. Curtin's report read in Court on March 29, 1976. She knew it was considered by Judge Nighswander. She made no effort to obtain a copy of the pre-sentence report and of Dr. Curtin's letters attached to and forming part of it.

In his testimony, Mr. Brouwer acknowledged that if, in March, 1976, he had made inquiries to enable preparation of a pre-sentence report relative to Jennifer Popen and had then obtained the information which he obtained in December 1977 and set forth in the pre-sentence report he prepared following her conviction upon the charge of manslaughter, he would have been concerned about Kim's safety and would have tried to prevent Kim's being returned to Jennifer Popen.

I have already mentioned my high opinion of Mrs. Maughan and her ability as a lay person to make an assessment of the situation which corresponded with the opinions expressed by an expert, Dr. Curtin. In another area Mrs. Maughan's instinct, to use her word, led her to doubt that Annals Popen had caused the injuries to Kim. She expressed that doubt to Mr. Brouwer even before she met Annals Popen. She said Mr. Brouwer then told her that in the beginning most of the authorities, and that term must have been intended to include the Society, felt that Jennifer Popen was the one who abused Kim. She said her instinctive feeling was that no mother would permit ongoing abuse of her child by the child's father. For that reason she was doubtful that Annals Popen had inflicted the injuries to Kim.

Another area where Mrs. Maughan correctly assessed the situation was that of the Parent Effectiveness Training Course. She knew Annals Popen and Jennifer Popen had not attended all sessions of that Course to the date of her written report at the end of June, 1976, but, on the basis of her discussion with them, she felt that they were not able to understand it and absorb its full content, as for example, the application of techniques mentioned in the Course.

Jennifer Popen in her testimony upon the Inquiry spoke derogatively about the Course and its suitability to Annals Popen and her as parents of Kim. She felt it related more to problems parents might have with much older children, perhaps teenagers.

Mrs. Maughan testified that she formed the opinion that, in the marriage and in the affairs of the family, Jennifer Popen was the dominant and more intelligent partner and Annals Popen the subservient partner.

On the basis of her reading of the file in the Probation Office Mrs. Maughan said Jennifer Popen strongly asserted that Annals Popen was responsible for the deliberate injury to Kim and, while assuming responsibility for some incidents of injury to Kim, she claimed that those later injuries were incidents of accident. In retrospect, when she testified, Mrs. Maughan formed the opinion that Jennifer Popen had sought to deceive her.

Mrs. Maughan testified as to the atmosphere surrounding her visits to the Popen home. On June 20, 1976, Annals Popen, Jennifer Popen and Kim all appeared tense at the outset, but gradually, with general conversation, that eased.

In connection with her visit on June 20, Mrs. Maughan wrote in her report that she would like to contact the Society to ascertain what arrangements had been made for Kim's care during Jennifer Popen's hospitalization for delivery of the baby and to ascertain if Jennifer Popen and Annals Popen had in fact attended most of the Parent Effectiveness Training Course. She said she wanted that contact only to obtain information and not because of any anxiety about Kim's well-being. Perhaps unfortunately, she did not make that contact. It was merely an unfulfilled intention.

On July 4, 1976 the atmosphere was somewhat relaxed. Annals Popen explained to Mrs. Maughan that two minute bruises in the area of Kim's cheek were caused by Kim pinching herself.

On July 18, 1976, Mrs. Maughan was struck by a great change. Jennifer Popen was curt in receiving her and appeared hostile. Annals Popen looked very worried and was very tense and anxious. Kim was not seen by Mrs. Maughan on that occasion. Kim was said to have been in bed. Mrs. Maughan felt she had no authority to insist upon seeing her. I believe she was correct in that understanding.

This was one incident of a person visiting the Popen home in an official capacity and being denied, however politely, an opportunity to see Kim.

Mrs. Maughan inquired quite directly as to why Annals Popen and Jennifer Popen were hostile, worried and tense. She was given an explanation based on Jennifer Popen's being uncomfortable with some dental problem.

Mrs. Maughan testified that after some discussion she sought to learn some of the circumstances surrounding the injuries to Kim which had led to the charge against Annals Popen in the fall of 1975. She said Jennifer Popen denied having been present in the room when Kim was injured by Annals Popen, but then

> "just closed right up, so I knew there was no point continuing that line anyway at that stage."

Mrs. Maughan said that Jennifer Popen then began to be critical of Mrs. Lo. The criticism was particularly that Mrs. Lo had visited on the previous Monday by prior arrangement, that being her first visit since the birth of Kim's brother, Karie, in July, 1976, but she had returned unexpectedly on Wednesday "just tapped on the door and opened it and walked right in." Mrs. Maughan testified that Jennifer Popen said that made her angry and that it seemed Mrs. Lo was trying to "catch [her] doing something" and to question Jennifer Popen's ability to care for two children.

Mrs. Maughan testified that she tried to deal objectively with that position taken by Jennifer Popen. She said that she told Jennifer Popen she could understand Jennifer Popen's feelings of anger if Mrs. Lo gave that impression. She testified she had told Jennifer Popen that

> "that is rather rude if that s what happened."

Mrs. Maughan testified that she suggested that Jennfier Popen complain directly to the Society, but Jennifer Popen declined to do so because

> "she was afraid to cause any trouble and besides she didn't want to hurt anybody's feelings."

Mrs. Maughan testified that she encouraged Jennifer Popen to protest Mrs. Lo's actions and that then Jennifer Popen enlarged her criticism of Mrs. Lo, particularly as to her alleged comments to Jennifer Popen about birth control. Mrs. Maughan testified that she told Jennifer Popen she could understand Jennifer Popen's resentment if that indeed had happened.

Mrs. Maughan testified that she felt a lot of the difficulty arose from Jennifer Popen's own personality, her pride, particularly in her intelligence and education, and her independence.

Mrs. Maughan also said she felt that perhaps Jennifer Popen had some guilty secrets she was afraid would be uncovered by Mrs. Lo. Mrs. Maughan somehow related that to the fact that, while

Annals Popen had pleaded guilty, some people originally thought Jennifer Popen was at least involved in the abuse of Kim.

I have had in another connection much the same feeling that Mrs. Maughan expressed. The feeling was that Jennifer Popen sensed that Mr. Carter was suspicious of her and thus she wanted him removed from the case lest he ascertain the true state of affairs. Her wish was fulfilled. Mrs. Harvey removed Mr. Carter.

As she was now being critical of Mrs. Lo Jennifer Popen had mounted the same sort of general attack upon Mr. Carter before the case was transferred to Mrs. Lo. Mrs. Lo in her testimony said she understood from Mrs. Harvey that Annals Popen and Jennifer Popen were very hostile to Mr. Carter.

As to her not having contacted the Society herself when Jennifer Popen made these critical comments about Mrs. Lo, Mrs. Maughan's testimony was:

> "I felt if she [Jennifer Popen] had a complaint against the Children's Aid really at that time it was not my place to go to the Children's Aid."

She testified that she told Jennifer Popen that if she had such strong feelings she should talk to someone at the Society.

Mrs. Maughan testified that as she then sought, by discussion, to explore the circumstances of Kim's injury, Jennifer Popen almost insisted that there be no such discussion.

She testified that Jennifer Popen expressed criticism of Annals Popen's attendance at Alcoholics Anonymous and suggested that he derived no benefit from the meetings. She testified that Jennifer Popen went on to claim that the Parent Effectiveness Training Course was of some benefit. Mrs. Maughan said she was surprised by that because she had the impression from her original visit that they had not absorbed too much of the Course.

In her testimony Jennifer Popen made a negative assessment of the value of the Parent

Effectiveness Training Course to her and Annals Popen.

Mrs. Maughan testified that she had not consulted with anyone at the Society. She said she was new to the situation and was trying to get some insight into it before trying to develop any relationship between her services and those of the Society.

She testified that she had arranged to see Annals Popen on Sunday, August 1, 1976. At that time she was visiting him at intervals of two weeks. She was unable to keep the appointment and telephoned. She said she spoke to Jennifer Popen who said Annals Popen was sleeping. That response bothered Mrs. Maughan somewhat because it was supper time and because of Annals Popen's apparent anxiety on July 18, which she felt was not all the result of Mrs. Lo's visit. She feared he may have been drinking.

Thus on August 1, 1976 Mrs. Maughan had some concern as to the state of conditions in the Popen home and as to the relationship between Kim's parents.

The visit of August 1 was postponed to Sunday, August 8, 1976. On that date both Annals Popen and Jennifer Popen appeared to be delighted to see Mrs. Maughan.

Mrs. Maughan testified that both stated they felt relaxed during her visits, unlike how they felt during Mrs. Lo's visits. She said both also stated that during her visits Kim's behaviour was different from what it was during Mrs. Lo's visits. Mrs. Maughan testified that Jennifer Popen continued to complain about Mrs. Lo.

She said that usually during her visits Kim sat on the chesterfield. On the first visit on June 20, 1976, at Mrs. Maughan's suggestion, Kim did come to her and sat on her knee for most of the visit. On another occasion, July 4, 1976, Kim got down from the chesterfield to go to the washroom. Those were the only two occasions on which Mrs. Maughan saw Kim other than on the chesterfield or in the bedroom.

Mrs. Maughan testified that that did not appear to be unusual because Kim was very withdrawn. Mrs. Maughan said she tried to assess Kim's condition and had some concern that she may have suffered some residual damage from the earlier abuse.

Mrs. Maughan said that Kim was usually relaxed and friendly with her during her visits. However she testified that on August 8, 1976:

> "[Kim] was once more kind of huddled back on the chesterfield and very withdrawn, not responding when I spoke to her. She would just look at me...
> [she was] very withdrawn and a little peevish when her mother or dad spoke to her; she was a little irritable."

Mrs. Maughan testified that this led her to comment that Kim seemed tired. Jennifer Popen responded to that by saying Kim had a sore lip. Mrs. Maughan said the mark was not "that obvious" and she had not noticed it, but Jennifer Popen pointed it out.

Mrs. Maughan described the mark as being

> "more like a little swelling and a little discoloured"

on the bottom lip. Jennifer Popen told Mrs. Maughan it was a coldsore which Kim kept picking, but she had she had had Kim to the doctor two or three days earlier and obtained some ointment. Mrs. Maughan testified that Jennifer Popen said the ointment caused Kim to cry and the doctor said to leave it alone to heal on its own.

Mrs. Maughan was shown Exhibit 14D, a photograph of Kim's body after her death. She said the mark appearing on the lip in that photograph was not what she had seen on August 8, 1976. She testified that on August 8, 1976:

> "there was no blood or anything visible... it wasn't open anyway at that stage."

In cross-examination she agreed that the condition of Kim's lip as shown in that photograph was much worse than she saw on August 8 and then added it was "fresher."

Mrs. Maughan testified that this mark was the only mark she had seen on Kim. She said she had seen no bruising on the side of Kim's neck or elsewhere on her body. Mrs. Maughan described Kim's usual clothing as being shorts, sleeveless low-cut T-shirt, ankle socks and shoes, all of which would have permitted Mrs. Maughan to see bruises or marks, had there been any, on most of Kim's body.

When asked about Kim's appearance on August 8, 1976 as compared with the photograph of her dead body taken on August 11, 1976, Mrs. Maughan said she had had a good opportunity to see Kim's neck, head and face and the parts of her body not covered by that very light clothing she usually wore. Mrs. Maughan testified that, being aware that the probation order she was supervising arose as a result of abuse of Kim and that abuse could recur, she looked at Kim as closely as she could without specifically going to Kim and examining her. Mrs. Maughan said that all she saw was the mark on Kim's lip which Jennifer Popen called a cold sore. She said the photograph of Kim's face indicated a "fresher" break in the lip than the one she saw on August 8, 1976 and also showed a bruise and cut on Kim's jaw which she had not seen on August 8, 1976.

I am satisifed on Mrs. Maughan's evidence, which is corroborative of expert medical testimony as to the time at which various injuries to Kim may have occurred, that if that break in the lip and bruise and cut on the jaw shown in the photograph had been present on August 8, 1976, Mrs. Maughan would have seen them and would have remembered them. I am satisifed they were not there.

I am similarly satisfied that the contusions on Kim's scalp at the hairline mentioned in Dr. Patodia's post-mortem examination report were not visible on August 8, 1976. Mrs. Maughan reinforced the basis for that conclusion by testifying that when she saw Kim's body at the funeral home she immediately noticed the head bruises.

I reach the same conclusion with reference to the injury to Kim's left ear and the contusion on her left cheek.

As to the injuries to Kim's hands, arms and elbows mentioned in the report on the post-mortem examination, while Mrs. Maughan acknowledged she had not looked carefully at Kim's hands and that she may not have seen the backs of Kim's arms and elbows, she did say she had noticed Kim moving about on the chesterfield without in any way favouring her arms and elbows. Thus I am satisfied that the injuries to Kim's hands, arms and elbows noted after her death were not present, visibly, on August 8, 1976.

Mrs. Maughan testified that on August 8, 1976 Jennifer Popen, for the first time, made reference to the doctor having discovered some condition in Kim's blood. The reference was to Dr. Gannon who was serving Dr. Jumean's patients during Dr. Jumean's absence. Mrs. Maughan quoted Jennifer Popen as having said:

> "...I don't know whether it's sugar diabetes or what...Maybe this is why she bruises too."

Jennifer Popen told Mrs. Maughan that although she had already told Mrs. Harvey of this, Mrs. Lo nonetheless persisted in commenting or remarking upon bruises on Kim.

Mrs. Maughan testified that Jennifer Popen has further complaints about Mrs. Lo. The complaints related to Mrs. Lo's queries with respect to Kim's care and her comments thereon and her intrusion upon the privacy of the family.

Mrs. Maughan said that she then, on August 8, decided she should talk with Mrs. Lo. She said she informed Annals Popen and Jennifer Popen of her intention to speak to Mrs. Lo and obtained their consent. Mrs. Maughan stated that she need not have obtained such consent,

> "but this is more or less the procedure we use."

Mrs. Maughan continued her testimony to say that she decided to speak to Mrs. Lo and to try to establish if Jennifer Popen's complaints were valid or if there were a clash of personalities. She also wanted to learn Mrs. Lo's assessment of the situation.

Mrs. Maughan's reference to the possibility of a clash of personalities is interesting when one considers Mrs. Harvey's testimony relevant to the reasons for the transfer of the file from Mr. Carter to Mrs. Lo. Inherent in that testimony was a suggestion that a problem existed because of Mr. Carter and that Mrs. Lo would be one to whom Jennifer Popen could more easily relate. There were other areas of evidence indicating some difficulties in the relationship between Jennifer Popen and Mr. Carter. As I view all of that evidence, I am satisfied that whatever difficulties there were they were not of Mr. Carter's making and probably they were contrived by Jennifer Popen.

Mrs. Maughan testified that she never saw Jennifer Popen exhibit "voluntary affection" towards Kim. She testified that if Kim were close to Jennifer Popen, she did not push Kim away, but did not put an arm around Kim or hug her. She said she did not see Jennifer Popen be mean to Kim.

On Thursday, August 12, 1976 at about 8:45 p.m., Annals Popen telephoned Mrs. Maughan to advise her of Kim's death on August 11, 1976. She testified that he told her Kim had been riding a little toy horse on the porch, that Jennifer Popen had gone into the house for something and that when Jennifer Popen returned to the porch Kim was lying on the ground. Annals Popen told Mrs. Maughan that Jennifer Popen took Kim to the hospital. Mrs. Maughan said Annals Popen was very sad.

As a result of that telephone conversation, and with the agreement of Annals Popen and of Jennifer Popen relayed through Annals Popen, Mrs. Maughan visited the Popen home that same evening.

Mrs. Maughan testified that Jennifer Popen spoke with her during her entire visit that evening. Mrs. Maughan said Jennifer Popen related the events of that day much as Annals Popen had during his telephone call, but in greater detail.

Mrs. Maughan continued her testimony to say that she spoke with Jennifer Popen three times after Kim's death and Jennifer Popen told her a different story each time.

The first story was that told on August 12, 1976.

In the second story, told to Mrs. Maughan on August 13, 1976 Jennifer Popen sought to blame Kim's death on another person.

In the third story, told to Mrs. Maughan at Kim's funeral, Jennifer Popen continued to blame the other unnamed person, but by then, according to Mrs. Maughan:

> "[Jennifer Popen's] stories just weren't making any sense at all. They weren't even jibing..."

So Jennifer Popen had no credibility in Mrs. Maughan's view. Mrs. Maughan testified that:

> "...even without the two previous contacts, the story that [Jennifer Popen] told me the third time, it didn't even jibe -- the details that she was telling me then."

Mrs. Maughan testified that on August 12, 1976, Jennifer Popen had told her that Monday, August 9, 1976 had been a very good day for Kim, "the happiest day of her life", but on Tuesday, August 10, 1976 Kim awoke, did not feel well, was cranky, would not eat her breakfast, bumped into doors and furniture and "all she wanted to do was sleep."

Mrs. Maughan said Jennifer Popen continued that story to say that Kim was awake through the night, Tuesday, but settled down again with no problems. Jennifer Popen, as related by Mrs. Maughan, said that on Wednesday morning, August 11, 1976, Kim was worse, still refused to eat or drink and "when [Kim] went to get down from her high chair she fell." Jennifer Popen went on to say that she had called Mrs. Vandenberghe who said she thought Kim was ill and should have a doctor. As the story continued it was that Jennifer Popen and Mrs. Vandenberghe took Kim's temperature and found it to be elevated so that Jennifer Popen called Dr. Gannon who refused to see her then and asked her to call back in the afternoon when another doctor might see her. Jennifer Popen's story to Mrs. Maughan continued that in the afternoon the second doctor declined to see her.

Mrs. Maughan testified that she then asked Jennifer Popen why she had not taken Kim to the emergency department of the hospital. She testified that Jennifer Popen's reply was that she had thought of doing that, but was afraid to because Mr. Carter had told her that if they ever brought Kim back with anything wrong the Society would take her away again and thus, Jennifer Popen said, she was so upset she could not think.

It is appropriate and convenient for me to make here some reference to the brief testimony of Mrs. Vandenberghe.

In essence, as I understand Mrs. Vandenberghe's testimony, she, as a friend and neighbour, visited with Jennifer Popen from time to time during Kim's life and particularly during the period covered by this Chapter of the Report. At no time during Kim's life did Mrs. Vandenberghe see anything occurring, nor the results of any occurrence, which alarmed her sufficiently to express to anyone, including Mrs. Lo whom she had met in the Popen home, any concern for Kim's safety or about the care she received from her parents.

Mrs. Vandenberghe met Mrs. Lo during the period of Kim's visits home prior to May 27, 1976.

During one of those visits, Mrs. Vandenberghe expressed to Mrs. Lo some concern that Mrs. Lo had instilled in Jennifer Popen so much fear that Kim would not be returned home if she suffered any injury, however slight, during any visit to her family home that Jennifer Popen insisted Kim remain on the chesterfield and not play about the house as one might expect a child to do normally during her visits to her home.

Thus, Jennifer Popen, talking to two different people, Mrs. Vandenberghe and Mrs. Maughan, on two different occasions, blamed two different people, Mr. Carter and Mrs. Lo, for the alleged concern or fear that Kim would be removed from the Popen home in the event she were injured.

Mrs. Vandenberghe testified that, during one or more of Kim's visits home, Mrs. Lo did inquire of her as to how Kim and her parents "were making out" during the visits. She said she answered that all was "fine," which was a truthful answer based on her observations of how Kim had been treated during the visits.

Mrs. Vandenberghe testified that she just happened to be in the Popen home when the question to that effect was put. She said Mrs. Lo never sought her out away from Jennifer Popen to inquire as to Kim's health or care.

Mrs. Vandenberghe testified that at no time after Kim's return home in May 1976 did Mrs. Lo inquire of her as to Kim's health or care.

Similarly, Mrs. Vandenberghe testified that she had not sought out Mrs. Lo to mention anything to her, including two particular incidents she mentioned in her testimony.

Mrs. Vandenberghe's testimony was that those two incidents in Kim's life, at the times they occurred, were somewhat unsettling to her, but yet did not particularly alarm her as to Kim's safety. I am sure that these were the two incidents which, viewed by her in retrospect as she testified, gave to her the feeling of guilt which she said she had.

From Mrs. Vandenberghe's testimony I gather that the two incidents apparently occurred during a period about three or four weeks before Kim's death. That would indicate that they both occurred during July 1976.

In one of those incidents, Mrs. Vandenberghe was visiting Jennifer Popen in the Popen home when she heard Kim, who was in the bedroom, screaming and she heard the sound of Jennifer Popen slapping Kim. Mrs. Vandenberghe went to the bedroom to inquire as to the reason for the screams and slaps. She said Jennifer Popen told her that Kim had wet the bed and was "going to stay like that," that is, wet in a wet bed. Mrs. Vandenberghe said she suggested Jennifer Popen should change Kim and the bed, but Jennifer Popen was adamant and left Kim crying and shaking in a corner of the bed. Mrs. Vandenberghe did not notice any injury to Kim at that time.

In the other incident, Mrs. Vandenberghe was visiting Jennifer Popen in the Popen home when Kim was sick and vomited upon the floor. Mrs. Vandenberghe testified that Jennifer Popen slapped Kim for having done that. Mrs. Vandenberghe said there were four or five or six "hard enough" slaps inflicted by Jennifer Popen upon Kim from her waist to her shoulder.

Mrs. Vandenberghe testified that she had not seen much of Kim prior to August 31, 1975 and had seen no injury to her to that time.

As to her observation of any injury to Kim at any time Mrs. Vandenberghe testified that she had seen a cut on Kim's lower lip which was like a cold sore and did not heal because Kim picked at it. I presume that was the same condition noticed by Mrs. Maughan.

Mrs. Vandenberghe also testified she had observed a bruise around the whole of Kim's neck which bruise, according to Jennifer Popen, was caused by a too tight dress. Mrs. Vandenberghe had also seen an injury to Kim's finger, a similar injury, like a cut that had not healed or a scrape, to Kim's toe and a bruise to Kim's cheek.

Mrs. Vandenberghe testified that Jennifer Popen gave various stories for the injuries and, if confronted with the fact that she had told someone else something different, acknowledged that one or other of the stories was false. Mrs. Vandenberghe testified that she did not know what to believe.

Mrs. Vandenberghe did not clearly identify the approximate time at which she observed these injuries, but said they were similar to injuries on

Kim's body shown in some of the photographs taken after her death.

As to the events of August 11, 1976, Mrs. Vandenberghe's testimony is widely different from what Jennifer Popen told Mrs. Maughan on August 13, 1976.

Mrs. Vandenberghe's testimony was that she was in the Popen home during the morning of August 11. She saw Kim walk into a door, turn around and fall over her feet. She commented to Jennifer Popen that Kim did not look well and offered to drive Jennifer Popen with Kim to a doctor. Kim appeared to be in a daze and drowsy and "wasn't walking right." Jennifer Popen responded by saying merely that Kim was tired, that there was "nothing the matter with her" and that she, Jennifer Popen, would put her to bed.

Mrs. Vandenberghe testified that on August 11, 1976, apart perhaps from the mark which may still have been on Kim's lip, she did not see any bruise or mark on Kim which was unusual or which caused her any alarm.

I return now to Jennifer Popen's story to Mrs. Maughan as to the events of August 11, 1976. It continued to the effect that she took Kim to the back porch where she rode her little horse, that Jennifer Popen went into the house to get a washcloth, that when she returned to the porch she did not see Kim at first and then saw her on the ground bleeding heavily from her mouth. The story was that Annals Popen was not then at home, having gone to the store. Annals Popen confirmed only that last aspect of Jennifer Popen's story.

In her story to Mrs. Maughan, Jennifer Popen said she picked up Kim and asked a neighbour to drive her to hospital. Jennifer Popen told Mrs. Maughan that the neighbour said Kim was dying, placed her on the floor and applied heart massage and mouth-to-mouth resuscitation. The story continued that enroute to hospital the neighbour's wife continued the efforts of resuscitation, but Kim died in the hospital.

Mrs. Maughan said Jennifer Popen related all of these alleged events prior to Kim's death with a great lack of emotion.

Mrs. Maughan testified that on August 13, 1976, Jennifer Popen telephoned to ask her to come to the Popen home. Mrs. Maughan said that Jennifer Popen told her "they," the Society, took the baby, Karie, although earlier that day, in the morning, Mrs. Lo, even after talking to Mrs. Harvey at Jennifer Popen's request, had assured Jennifer Popen that they would not remove Karie.

Mrs. Maughan testified that Jennifer Popen continued on August 13, 1976 to tell her that in the afternoon Mrs. Harvey came with two police officers and removed Karie. Mrs. Maughan testified that Jennifer Popen told her that she had asked Mrs. Harvey where they were taking him and asked her to leave him at least until Kim's funeral, but Mrs. Harvey had replied:

> "How can you ask that when Kim died from kidney failure?"

On August 13, 1976, Jennifer Popen told Mrs. Maughan of the injuries Kim had suffered. Mrs. Maughan testified that she

> "didn't believe that any mother wouldn't know that those injuries were there."

Mrs. Maughan understood from Jennifer Popen that in addition to other areas of abuse Kim had been raped.

Mrs. Maughan expressed the opinion that Jennifer Popen was an expert liar. She testified that she did not always believe Jennifer Popen, but at the same time she had no proof that Jennifer Popen was lying. For example, she said, she was uncertain as to the truth of what Jennifer Popen had told her about Mrs. Lo.

Mrs. Maughan testified that on August 12 or 13, 1976, while discussing the events of 1975, Annals Popen still spoke of being drunk, but Jennifer Popen said

> "it wasn't him [Annals Popen]."

Mrs. Maughan said that when she pursued with Jennifer Popen the matter of the injuries which Kim suffered just prior to her death, including rape which Jennifer Popen had mentioned, Jennifer Popen claimed not to know who had caused them. Mrs. Maughan testified that Jennifer Popen spoke of her suspicions of one of Annals Popen's male relatives who, she said, had been alone with Kim prior to her death and who also had been with her at the time of every other injury.

Mrs. Maughan testified that at that time she asked Annals Popen why he had pleaded guilty. She said he replied that he had done so on the advice of his lawyer, Mr. Higgins, that, unless he did so, Kim would not be returned.

I want now to deal briefly with the involvement of The Lambton Health Unit in Kim's life.

The Lambton Health Unit had a fleeting and sporadic contact with the Popen family. That contact began in July 1974 when The Lambton Health Unit received from a hospital an official report of an illness from which Jennifer Popen was suffering. Mrs. Kuly, The Lambton Health Unit nurse who visited Jennifer Popen in that connection, found her to be in the early months of her pregnancy with Kim.

The entire incident was uneventful. Mrs. Kuly counselled Jennifer Popen generally as to nutrition and pre-natal care. Jennifer Popen indicated a desire to attend pre-natal classes in September and was encouraged to do so. She did not attend those classes. Perhaps this too was another instance of Jennifer Popen telling someone what she thought the other wanted to hear.

A nurse from The Lambton Health Unit visited Jennifer Popen in hospital after Kim's birth. The nurse felt that because of Jennifer Popen's youth a visit by a nurse from The Lambton Health Unit to the home would be helpful. Thus Mrs. Kuly visited the home in February, 1975 and spoke generally with Jennifer Popen about child care. Mrs. Kuly encouraged Jennifer Popen to call her if she needed any help.

The Lambton Health Unit had contact with or about the Popen family in June and September of 1975.

A nurse from The Lambton Health Unit visited Jennifer Popen in hospital in connection with the birth of her son in July, 1976. As a matter of routine visiting following that birth, Mrs. Kuly visited the home on August 10, 1976.

On August 10, 1976, Mrs. Kuly inquired about Kim. Jennifer Popen told her that Kim was sleeping, having her afternoon nap. This was an instance of Kim being said to be unavailable, asleep or away, when someone in an official capacity visited and inquired about her. There were other such instances.

Mrs. Kuly chose not to press her inquiry or to ask to see Kim. Mrs. Kuly testified that she made that decision because she regarded the situation as "sensitive" in that Jennifer Popen had described to her how closely the Society was supervising her. Mrs. Kuly, wishing to maintain a good relationship which she felt would enable The Lambton Health Unit to perform its role, felt that any further inquiry about Kim might, in the circumstances, be regarded by Jennifer Popen as being threatening and that the relationship of The Lambton Health Unit with the family might thus be damaged.

Mrs. Kuly testified that she was aware that the Society was supervising the family. She trusted the Society was ensuring Kim's safety.

The Society had not advised The Lambton Health Unit of Kim's return nor had the Society requested any assistance from The Lambton Health Unit. Mrs. Kuly neither saw nor heard anything to give her cause for concern for Kim or the new-born infant.

In retrospect, Mrs. Kuly's assessment of Jennifer Popen was that while she might have appeared to speak quite openly she was reticent and reserved and spoke only of things she wanted Mrs. Kuly to know, as for example, to say that the Society was closely observing the family.

On August 10, 1976 Jennifer Popen told Mrs. Kuly that Kim was doing well and was well physically. In her evidence before the Inquiry on September 17, 1978, Jennifer Popen said Kim was not well for a week prior to her death on August 11, 1976.

There was no communication between The Lambton Health Unit and the Society during the period covered in this Chapter of the Report.

Perhaps in explanation of the infrequency of visits by personnel of The Lambton Health Unit to the Popen home, Dr. Duncan, Director of The Lambton Health Unit, testified that there was an informal understanding between the Society and The Lambton Health Unit that when a child was in the care and custody of the Society the personnel of The Lambton Health Unit would not visit the home.

The rationale of that understanding was that too many social workers visiting one home was not a good thing.

It would seem that that rationale is sound. In the case of the Popen home during this period of time, in addition to the infrequent visits by personnel of The Lambton Health Unit, the Society, as represented particularly by Mrs. Lo, and by Mrs. Kirby until May 27, 1976, and the Ministry of Correctional Services, Probation Services, as represented particularly by Mrs. Maughan and Mr. Brouwer, were involved with the family.

Jennifer Popen was able to evoke some sympathy from Mrs. Maughan on the basis of what Jennifer Popen told Mrs. Maughan about the way Mrs. Lo was performing her duties. At the same time Jennifer Popen was expressing to Mrs. Lo criticism of Mrs. Maughan. On August 10, 1976, Jennifer Popen also complained to Mrs. Kuly about or at least commented upon Mrs. Lo's conduct.

Jennifer Popen was not slow in voicing to anyone who visited in any official sort of capacity, or even to any visitor such as Mrs. Vandenberghe, negative criticism of the actions or words of someone else who visited the home in any official sort of capacity.

In the earlier months of the period covered by this Chapter, that is from February 25 to May 27, 1976, both Mrs. Kirby and Mrs. Lo of the Society had ongoing contact with the Popen family.

For most of those months Kim was visiting with her parents. The visits were supervised by Mrs. Kirby on behalf of the Society.

Kim's visits with her parents had begun as early as September 11, 1975 at the Society's offices.

The records prepared by Mrs. Kirby disclose that Kim's visits with her parents in March, 1976 went rather well. However, Kim's actions during one visit attended by Mr. Popen's brother and her actions, as reported by Mrs. Cecile, with reference to a teenage boy were noted by Mrs. Kirby as possibly indicating Kim's fear of males with long hair.

While that possible fear was mentioned in testimony during the Inquiry, it seemed to me, on the evidence, that there was no relationship between Kim's actions, which were felt to be a demonstration of such possible fear, and the injuries which she had suffered in the past.

Mrs. Cecile felt that Kim's behaviour and development regressed following some of the visits, but Mrs. Kirby did not feel that the problems mentioned by Mrs. Cecile raised any concern or alarm as to the relationship between Kim and her parents. Mrs. Harvey shared Mrs. Kirby's opinion.

Kim's first visit with her parents in their home was on April 9, 1976 according to Mrs. Kirby's recording and testimony. Mrs. Lo's recording and testimony was that Kim's first home visit was on April 15, 1976.

This is another instance of fallibility in the records of the Society.

Because of hesitation and confusion in Mrs. Lo's testimony in this area and the consistency of Mrs. Kirby's testimony and recordings with reference thereto, I prefer and accept Mrs. Kirby's testimony upon this point.

Mrs. Kirby's testimony was that visits in the parents' home were begun because

> "there were obviously plans being made that the child was going to be returned"

to her parents.

She said that she first became aware of those plans on February 19, 1976, the day on which she, Mr. Carter and Police Constables Wyville and Charlton confronted Mrs. Harvey and opposed any such plan.

Mrs. Kirby said that about the end of March 1976, Mrs. Lo advised her that "they," I presume she meant the Family Services Department of the Society, were going to try to place Kim back in her home by the end of May.

Mrs. Kirby testified that she then inquiried of Mrs. Lo as to Mrs. Lo's dealings with the parents and the results thereof insofar as they affected the difficulties in the home which had led to the involvement of the Society in August, 1975. She said Mrs. Lo informed her that she had had several meetings with the parents who were recognizing a lot of problems and trying to change their way of living so as to have Kim returned. This included the intention of the parents to enrol in the Parent Effectiveness Training Course.

Thus, as late as the end of March, 1976, Mrs. Lo was speaking in the present tense about a lot of problems in the Popen home. She knew a lot of problems were in existence in the home at that time.

Because of that intention of the Society to return Kim to her home, Mrs. Kirby, with Mrs. Harvey and Mrs. Lo, decided it would be wise to place Kim in her parents' home for very short periods to get her used to that setting again. I had the impression that Mrs. Kirby's opinion as to the wisdom, or lack of wisdom, of that decision remained unchanged from February 19, 1976 and she joined in it merely because, in the organization of the Society, the Family Services Department "always made those decisions," that is decisions as to whether or not a child should be returned to the parents.

Mrs. Kirby also recollected that Jennifer Popen's pregnancy, expected to result in birth in July, was a prominent factor in the consideration of Kim's return to her parents' home.

Unfortunately neither Mrs. Kirby nor Mrs. Lo have made any recording in the Society's files with reference to that discussion between them about the end of March.

With reference to the question of Kim's visits in her home it is interesting to me to note Mrs. Lo's testimony with reference to and her recording of her visit with Annals Popen and Jennifer Popen on March 18, 1976. During that visit Jennifer Popen stated that Kim's visits to the family home would begin one month after the conclusion of the wardship proceedings. Thus Jennifer Popen anticipated those visits would begin on or about March 25, 1976. The recording does not disclose the basis for Jennifer Popen's comment. Mrs. Lo, when asked about it during the Inquiry, had no explanation. On the evidence presented upon the Inquiry, I am unable to determine the source of or basis for that comment by Jennifer Popen.

As it turns out Jennifer Popen's information or belief, from whatever source, was amazingly accurate. The first home visit was on April 9, 1976, just two weeks after March 25. The visits theretofore had been bi-weekly.

Jennifer Popen apparently had the information or belief before either Mrs. Lo or Mrs. Kirby the two workers in the Society directly involved with Kim and her parents at that time. It seems Mrs. Lo was not aware of it on March 18, 1976 and Mrs. Kirby felt she had participated in the decision with Mrs. Harvey and Mrs. Lo about the end of March, 1976. If Jennifer Popen's source was someone within the Society, one would have to be concerned as to why the Society's field workers, Mrs. Kirby and Mrs. Lo, were not informed and were led to believe, as was Mrs. Kirby, that she participated in the decision.

Mrs. Kirby's opinion was that Kim's visit to her home, on April 9, 1976 went well for both parents and for Kim.

Kim then visited her home on April 15, 22 and 29, 1976. No element of concern was noted during any of these visits, but Mrs. Kirby testified that during that period Kim was beginning to show gradually more regressive behaviour when returned to her foster home with Mr. and Mrs. Cecile. Mrs. Kirby attributed that to Kim's confusion because

> "she had kind of two sets of parents."

Mrs. Kirby's recordings in the Society's files indicated that on April 26, 1976 there was a conference of Mrs. Harvey, Mrs. Lo, Mrs. Archer and herself. In her testimony she said the recorded date was in error and that the conference was held on May 7, 1976.

In her testimony, Mrs. Kirby had no explanation for that error. She explained that her practice was to dictate her recording from her handwritten notes which she then destroyed, but she would not necessarily dictate immediately after the event she was purporting to record. Presumably Mrs. Kirby had not compared the transcription of her recording against the handwritten notes upon which she relied.

This was another, albeit minor, instance in which the fallibility of the Society's recordings was demonstrated.

To compound that fallibility, Mrs. Lo's recording in the Family Services Department's file in which she refers to that meeting is under date of May 6, 1976 and then under date of May 7, 1976, she notes a further meeting with Mrs. Kirby alone. Mrs. Lo testified that at the meeting of May 6, 1976 it was left to her and Mrs. Kirby to select the exact date of Kim's return to her home; so Mrs. Kirby and she met on May 7, 1976 and decided that Kim's return would be effected on May 27, 1976.

In any event the decision reached at the meeting was that, in Kim's best interests, the visits to her parents' home should be stopped, and, as recorded in the Children's Services Department's file:

> "it was decided to place her back in her parents' home at the end of May if the

> parents progressed in their counselling as they had done in the past 6 weeks."

In her testimony, Mrs. Kirby enlarged upon that recording when she testified:

> "...it was decided at that time that we should put the child back into the home before the new one came along and we chose May 27th as the date to put her back in..."

Thus again the recording was deficient in detail.

From Mrs. Kirby's testimony, I gather that the reference in her recording to the parents' progress in counselling arose from concerns expressed by Mrs. Lo on May 7, 1976 that:

> "the parents were not quite ready to have her back yet because they had just started under a Parent Effective(sic) Training course and that they needed maybe a little more time so that she was going to tell the natural parents that the child would be placed towards the end of the month that's if she felt that they were ready for her."

Mrs. Kirby further enlarged upon or clarified the recording when she testified that the basic decision to return Kim to her home had been taken prior to May 7, 1976. Nowhere in any record in the Society, either in the Family Services Department or in the Children's Services Department, is there any mention of that basic decision having been made.

It is of interest to compare Mrs. Kirby's recording in the Children's Services Department's file with that of Mrs. Lo in the Family Services Department's file. Under date of May 7, 1976, Mrs. Lo recorded:

> "Mrs. Kirby and I have decided to place Kim back home on May 27th. In the meantime no home visits will be made by Kim before this date."

If one had only the recordings of the Society upon which to rely as to when that basic decision was made, one would, from Mrs. Kirby's recordings, conclude that it had been made at a conference on April 26, 1976 attended by Mrs. Harvey, Mrs. Archer, Mrs. Lo and Mrs. Kirby and that the basic decision was the result of what was discussed at that conference.

Mrs. Lo's recording would indicate that the basic decision was made by Mrs. Kirby and Mrs. Lo on May 7, 1976 and that at the same time they decided to terminate Kim's visits to her home.

However, from the testimony upon the Inquiry, neither recording is accurate. The conference of the four workers was held, but it was on May 6 or May 7, 1976 and not on April 26, 1976.

The basic decision was made, but it was not made at that conference; nor was it made by Mrs. Kirby and Mrs. Lo alone. It was made by Mrs. Harvey months earlier, perhaps as early as September 1975, perhaps as a "working hypothesis" to use Mrs. Harvey's words. It was made by her alone without specific consultation with anyone else in the Society or elsewhere.

That decision was emphatically restated by Mrs. Harvey on February 19, 1976 when she was confronted with the concerned opposition of Mrs. Kirby, Mr. Carter, Police Constable Wyville and Police Constable Charlton to any such decision at that time.

By the time of the conference on May 6 or 7, 1976 all that remained to be decided was when and how that basic decision to return Kim to her parents would be implemented. By then Mrs. Harvey's "working hypothesis" had become the working policy of the Society with reference to Kim.

All of the testimony I heard as to the basis of any decision within the Society relative to Kim, including the basic decision to return her to her parents, was to the effect that there was little if any discussion or consideration of the question of the identity of the person or persons who had inflicted injury to and abuse upon Kim.

Mrs. Harvey testified as to her suspicion that Jennifer Popen was that person. Others in the Society seemed to assume that Annals Popen, by his plea of guilty to the charge under section 40 of The Child Welfare Act, acknowledged that he was that person. Even Mrs. Harvey seemed to feel that that plea by Annals Popen somehow inhibited the Society although she professed to Mrs. Lo that the Society should nonetheless concentrate on Jennifer Popen.

Perhaps Mrs. Lo best expressed the position of the Society when she said she did not feel that her role included investigation to determine the identity of Kim's assailant, but that her role was to help both the parent and the child.

Thus in May, 1976, Mrs. Kirby's direct involvement with Kim was concluded when Mrs. Kirby arranged for Kim to be examined by Dr. Singh on May 26, 1976 and then to be placed in her parents' home on May 27, 1976.

Until May 27, 1976, Mrs. Lo had no direct responsibility for the supervision of Kim or of her visits with her parents either at the Society's offices or their home. However, Mrs. Lo did participate to some extent to assist Mrs. Kirby in connection with some of those visits.

Primarily, until May 27, 1976, Mrs. Lo was involved in visits with Annals Popen and Jennifer Popen. There were frequent visits. They began on February 27, 1976 when Mrs. Lo met only Jennifer Popen in her home. Obviously Mrs. Lo was favourably impressed by what she saw and what Jennifer Popen told her at that time, although she did record her inability to understand some of what Jennifer Popen told her.

On March 4, 1976, Mrs. Lo visited Jennifer Popen again in her home. She testified that when she raised the question as to whether Annals Popen or Jennifer Popen had abused Kim, Jennifer Popen

> "did say that no matter how frustrated that she got she could not strike out at her child."

In retrospect that statement by Jennifer Popen was false and was made only to serve her own interests and purposes. It was a signal of possible danger to Kim.

Mrs. Lo testified that she had heard varying stories which it seems could have come to her only from the Society's personnel. One such story was that Annals Popen abused Kim while he was drunk. Another story expressed suspicion that Jennifer Popen abused Kim. Mrs. Lo did not know who abused Kim.

In her testimony, Mrs. Lo said she felt that Jennifer Popen's response which I have just noted was evasive and designed to indicate that Jennifer Popen did not wish to discuss the question of the abuse to Kim. While her recording in the Society's file notes that response to her by Jennifer Popen, it does not contain any comment upon it nor any indication of Mrs. Lo's feeling about it.

It would seem to me that if Mrs. Lo had that feeling that Jennifer Popen was evasive and unwilling to discuss abuse to Kim, Mrs. Lo should have been aware that such evasion and unwillingness might have indicated Jennifer Popen's own involvement in such abuse.

In her recording under date of March 4, 1976, Mrs. Lo wrote:

> "Once Kim comes home to stay the situation will be different. It then will require close observation of the child and intensive moral support for the parents."

I am satisfied that that reflects Mrs. Harvey's comments to Mrs. Lo and reinforces my earlier expressed conclusion that very early in the active involvement of the Society in Kim's affairs, Mrs. Harvey had formulated and expressed her intention that Kim would be returned to her parents.

It also reflects the knowledge of the Society that Kim's return home, by itself, would put added strain on the situation in the Popen home and require special effort by the Society's personnel to ensure Kim's safety.

Mrs. Lo next visited the Popen home on March 18. Both Annals Popen and Jennifer Popen were there. This was the first time Mrs. Lo spoke with Annals Popen. She testified that she had met him on some earlier occasion during one of his visits with Kim at the Society's office, but had not spoken with him.

Mrs. Lo's recording in the Society's file states that during this meeting she informed Annals Popen and Jennifer Popen that the Parent Effectiveness Training Course, would begin on April 22, 1976 and

> "Kim would not be returned home to live until we see how they respond to the course."

The same recording notes Jennifer Popen's belief that Kim would begin to visit in the home on March 25, 1976.

Mrs. Lo testified that the Parent Effectiveness Training Course did not begin on April 22, 1976, but was delayed. From Mrs. Harvey's testimony, I gather the Course began on April 26, 1976. From the pre-sentence report I gather that Mrs. Lo informed Mr. Brouwer that the Course ran for a period of eight weeks.

Thus by May 7, 1976, when the decision was made to return Kim to her home on May 27, 1976, only two sessions of the Course had been held. There was no firm evidence that Annals Popen and Jennifer Popen or either of them attended either of those sessions. By May 27, 1976 some sessions of the Course would have been held, but again there was no good evidence as to the attendance of Annals Popen and Jennifer Popen.

Similarly there is no good evidence as to what benefit Annals Popen and Jennifer Popen or either of them derived from the Parent Effectiveness Training Course, either at its conclusion or by May 7 or by May 27, 1976.

Mrs. Harvey in her testimony acknowledged that the Parent Effectiveness Training Course was not designed to prevent child abuse, but rather was designed to teach parenting skills, that is to teach parents to raise, direct and discipline children. She felt that such a course would be of indirect assistance to parents involved in a child abuse situation in that, in her opinion, in such a situation lack of communication and cohesion between the parents is a problem. She felt that inability to communicate was a problem for Annals Popen and Jennifer Popen.

In her testimony upon the Inquiry, Mrs. Lo said that her understanding was that the Parent Effectiveness Training Course was

> "to help the parent to communicate with the child"

as by showing discipline and love at the same time. She acknowledged that that was removed from child abuse, but, like Mrs. Harvey, she said it was related in the overall picture because she understood that most abusive parents did not know how to discipline their children.

While Mrs. Harvey, in that portion of her testimony which I have just mentioned, seemed to defend the selection of the Parent Effectiveness Training Course as a required course of instruction for Annals Popen and Jennifer Popen, her subsequent response in testimony was, in my opinion, a far more eloquent statement as to the value of the course in the particular circumstances. It was really a statement that the Course lacked value in the particular circumstances.

That response was as follows:

> "I might explain one other thing about the use of the Parent Effectiveness Course (sic). We had searched high and low in the community to find something that we could provide for this family over and above counselling. You can't be there twenty-four hours a day. We wanted to have a learning process in addition to what we had, and all we could find in the community that was available to us was the Parent Effectiveness Training Course and I had been discussing it with Mr. Stevens

> beforehand. It was not held at Lambton College, it was held in the Agency and the agency put up part of the funds in order to have it.
>
> Q. Put up?
>
> A. Part of the funds.
>
> Q. But it was held under the aegis of Lambton College, was it?
>
> A. No, it was held under the aegis of the Parent Effectiveness Training Course and we had a special contract with that.
>
> Q. I see.
>
> A. Mr. Stevens was giving it at Lambton College but it was much too expensive for many of our clients to attend, therefore, we had it at a reduced rate at the agency so that more clients could avail themselves of it, but it was the only thing available in this whole community."

I am not satisfied that the Society and Mrs. Harvey really felt that the particular Course, apparently of value to so many of the clients of the Society that the Society made special arrangements for it to be made available to them, would be of real value to Kim's parents and thus to Kim. Their case was different from any other in the community at the time.

Mrs. Harvey summed it up when she said:

> "it was the only thing available in this whole community."

In requiring Jennifer Popen and Annals Popen to attend the Parent Effectiveness Training Course, Mrs. Harvey was making a gesture of doing something to help them and Kim. It was merely a gesture and no more.

There was no evidence of any search, by the Society or Mrs. Harvey, as to any course, wherever available, specifically designed to be of assistance to the parents of any child abused by the parents or one of them or to be helpful to Jennifer Popen or Annals Popen.

Mrs. Harvey testified that the person leading the Parent Effectiveness Training Course was not, during the delivery of the Course, aware that Annals Popen and Jennifer Popen were the parents of a child who had been abused, perhaps by one or both of them. She said she deliberately did not inform the leader that Annals Popen and Jennifer Popen were involved in a child abuse situation because she felt his role in the Course was to deal with problems any of the group brought to him and she did not want Kim's parents to be singled out as being abusive parents.

I have difficulty, if indeed I have any capacity, to understand the rationale of that statement. If the leader was to help Annals Popen and Jennifer Popen by dealing with any problem they presented, how could he deal with the fact that their problem was that their child had been abused, perhaps by either or both of them, unless he knew that their child had been abused? In the nature of group discussion which Mrs. Harvey's testimony seemed to suggest would follow upon any problem being presented by someone taking the Course, how could anyone prevent other members of the group from knowing that Annals Popen and Jennifer Popen were involved in a child abuse situation?

Further how could two people such as Annals Popen and Jennifer Popen be expected to present their problem to the group leader in any meaningful or honest way so that he could assist them in its resolution. According to Mrs. Harvey, they were unable to communicate even with one another. Many witnesses commented to the effect that Annals Popen had difficulty expressing himself and permitted Jennifer Popen to dominate any conversation. Jennifer Popen was so facile, but yet so untrustworthy, in her stories, as to be described by Mr. Carter as a "proverbial liar."

In this connection one must remember Dr. Curtin's comment that the Popen family history as presented to him was so bland as to cause him to wonder about the reliability of what he was told. Mrs. Maughan expressed a somewhat similar thought.

I just do not believe that Mrs. Harvey really believed that Jennifer Popen or Annals Popen would properly and honestly put to the leader of the Parent Effectiveness Training Course any problem which existed in their home or would acknowledge that Kim was the victim of abuse.

In connection with any assessment of the Parent Effectiveness Training Course in relation to Annals Popen and Jennifer Popen, I must recall Jennifer Popen's testimony that she felt it was not of particular value to her as a parent of a young child. She testified that it appeared to be designed to instruct and assist parents who had difficulty in disciplining older children.

From the emphasis placed on the Parent Effectiveness Training Course by the Society in the various recordings and by Mr. Brouwer in the pre-sentence report, probably on the basis of the understanding he obtained from Mrs. Lo, and even by Dr. Curtin in his report on Annals Popen dated March 19, 1976 when he places reliance on Annals Popen's

> "[attendance at] whatever courses Mrs. Harvey, the Public Health Nurse (sic) might set up,"

I had gained the impression that the Parent Effectiveness Training Course was of paramount and direct importance in assisting Annals Popen and Jennifer Popen. It was anti-climactic to hear Mrs. Harvey describe it as being "all that was available" and of only indirect assistance to them.

However, the potential value of the Parent Effectiveness Training Course in the present instance being whatever it was, there remains the question of what was done by the Society to ensure that Kim's parents did in fact benefit from the Course.

In her recording for April, 1976, Mrs. Lo wrote a long paragraph relating to the Parent Effectiveness Training Course and the involvement of Annals Popen and Jennifer Popen in it. Even in that recording there is a note that Jennifer Popen felt that most problems raised in the Course related to teen-aged children rather than to younger children.

It would seem to me that that note should have triggered something more from the Society than Mrs. Lo's action which, she noted, was to encourage Annals Popen and Jennifer Popen to raise in the class the question of problems with younger children. Mrs. Lo would have to be entirely naive to believe that Annals Popen or Jennifer Popen would respond positively to any such encouragement.

Particularly in light of all the problems noted in that paragraph and which Annals Popen and Jennifer Popen claimed to be having in the Course that suggestion seems to have been futile. They said they were shy, but were overcoming it. Annals Popen said he was having trouble with his eyes and could not read for long; so Jennifer Popen and he read alternate pages. Annals Popen said he found it hard to write because he used his left hand; so, as one solution, he gave his answers to Jennifer Popen for her to write.

In her recording under date of March 18, 1976, Mrs. Lo wrote of a discussion she had with Annals Popen and Jennifer Popen with reference to the Parent Effectiveness Training Course and of her having told them:

> "Kim would not be returned home to live until we see how they respond to the course."

That indicates to me the great importance Mrs. Lo placed upon the Course.

In her recording of May 6, 1976, Mrs. Lo noted that:

> "Since the home situation has been greatly improved and both parents are doing their best to get things out of the P.E.T. course..."

Those were factors apparently to be considered by the Society's personnel in connection with the decision as to when Kim was to be returned to her parents' home.

Mrs. Lo did not at any time indicate the basis for either of those statements in her recording. On the evidence presented upon the Inquiry, I am unable to find that there was any valid factual basis for either of them.

I have already set forth some excerpts from Mrs. Kirby's recording dated April 26, 1976 and her oral testimony enlarging upon it. That related to the Parent Effectiveness Training Course and the progress of Annals Popen and Jennifer Popen in it.

Nowhere in the recording in the Society's files is there any reference to any effort by Mrs. Lo or anyone else at the Society to inquire of anyone, other than Annals Popen and Jennifer Popen, as to how they were progressing in the Parent Effectiveness Training Course. There was no such inquiry even as to whether they were attending the course let alone whether they were understanding it and benefitting from it. Mrs. Harvey did say she knew they were attending, but she did not state the source of that knowledge. I am not satisfied that Mrs. Harvey knew any such thing.

Nowhere in the evidence upon the Inquiry was there any indication that any effort to learn the progress of Annals Popen and Jennifer Popen upon the Parent Effectiveness Training Course had been made by any of the Society's personnel. Mrs. Harvey did testify as to having spoken with the director of the course. She spoke of that gentleman's satisfaction with the results he felt Annals Popen and Jennifer Popen achieved, but he had not earlier been aware of the reason for the Society's involvement in their lives. The conversation clearly was after the Course was completed and after Kim had been returned to her home.

Thus I am satisfied that, while Mrs. Lo and Mrs. Harvey, both in recordings in the Society's files and in testimony upon the Inquiry, mentioned the importance of the Course in the deliberation as to Kim's future, that was mere lip service. They made no effort to obtain any assessment of how Annals Popen and Jennifer Popen or either of them "responded" to the Course, to use the verb written by Mrs. Lo in her March 18, 1976 recording.

In my opinion, Mrs. Harvey and Mrs. Lo deluded themselves and perhaps Mrs. Kirby and others of the Society's staff in this regard. Mrs. Lo was aware of problems. She recorded them under date of April, 1976. Mrs. Maughan had noted other problems. She felt that some of them indicated that Annals Popen and Jennifer Popen were not benefitting fully from the Course. Despite her awareness of problems Mrs. Lo did nothing to resolve them except to speak with Annals Popen and Jennifer Popen. Nor did Mrs. Harvey, who was supposedly so closely supervising Mrs. Lo's work with the Popen family, do anything to resolve them.

In my view all of this is, at best, an instance of good intentions without adequate preparation and follow-up to ensure fulfillment of those intentions. At worst it was the creation of a mirage, an illusion of beneficial activity. I think it was closer to the worst than to the best.

Whatever decisions were made by the Society during this period of time were based on Mrs. Lo's observations in the Popen home and on what she was told by Annals Popen and Jennifer Popen. The Society did not avail itself of whatever might have come from inquiries directed to other persons or agencies, such as the director of the Parent Effectiveness Training Course, Mr. Brouwer and Mrs. Maughan of Probation Services, Mrs. Kuly of The Lambton Health Unit, the Sarnia Police Force, St. Joseph's Hospital and various doctors and medical personnel all of whom the Society knew had recent if not immediately current involvement with the Popen family. The Society made no such inquiries.

After Kim's return to her home on May 27, 1976, Mrs. Lo was the only Society worker who visited the home.

Her first visit after Kim's return was on May 31, 1976. On that visit Jennifer Popen spoke of Kim having temper tantrums. Mrs. Lo gave Jennifer Popen some advice in that connection.

Mrs. Lo continued in her recording and her oral testimony upon the Inquiry to refer to her visits after May 31, 1976. They were semi-weekly for perhaps two weeks and thereafter were weekly. She indicated that in the period to June 16, 1976 the parents were readjusting to each other, presumably in relation to the change in circumstances brought about by Kim's return. She said that while they were having some difficult moments with Kim they seemed able to handle it. She said that latter comment was based on what she was told and what she observed.

Mrs. Lo's recording for the period from June 1 to June 16, 1976 contains reference to Kim's having stomach flu "near the end of June." Either that reference to time is in error or the events recorded occurred later than June 16, 1976 and the recording was made at some time after June 16, 1976. This is another instance of error, however caused and however unimportant, in the Society's recordings and files.

I assume that Kim did suffer from stomach flu some time in June and was teething and miserable and that she would not eat much and that she was up at night, all as recorded by Mrs. Lo in that portion of her recording. Even though the same paragraph of the recording makes reference to the imminent birth of Jennifer Popen's expected child and some of her problems in that connection, Mrs. Lo did not see fit to require or suggest that Kim be examined and treated by a medical doctor. There is no written or oral testimony that Mrs. Lo even saw Kim during this period of time.

Mrs. Lo testified that immediately upon Kim's return home she spoke with Annals Popen and Jennifer Popen about undressing Kim to examine her if she, Mrs. Lo, felt it was necessary to do so. When, based on the testimony of Douglas Vandenburghe, counsel suggested to Mrs. Lo that she had told Annals Popen and Jennifer Popen that she had the right to undress Kim and examine her, but that it was embarassing to her to do so, Mrs. Lo denied the latter part of that suggestion.

Mrs. Lo said neither parent raised any objection to her undressing Kim. She said she would have thought it necessary to undress Kim if she had observed any physical marks upon Kim or any unusual behaviour by Kim. Since she did not undress Kim for examination at any time, I can only conclude that Mrs. Lo did not make any such observation although, as she testified, Kim, lightly dressed as for summer, would sit on her lap and she would look at Kim.

It would seem that the discussion between Mrs. Lo and Annals Popen and Jennifer Popen arose on Mrs. Lo's own initiative and not as a result of any direction.

Mrs. Lo testified that she was not at any time instructed by Mrs. Harvey or anyone as to how she should examine Kim. Mrs. Harvey's testimony was that she had instructed Mrs. Lo to watch very carefully for any bruise or anything which would alert her to any change in the child. Mrs. Harvey said she did not discuss with Mrs. Lo the matter of her undressing Kim. I gather there simply was no thought given to it. As Mrs. Harvey put it, she did not lay down rules and regulations for Mrs. Lo.

That was error on the part of Mrs. Harvey. She was derelict in her duty as supervisor of Mrs. Lo, an entirely untrained and inexperienced employee. More importantly she was derelict in her duty, as an employee of the Society, to protect Kim.

If ever anyone needed rules and regulations in a particular situation, Mrs. Lo needed them in this situation.

In a sense in reinforcement of my belief and concern that the recordings in the Society's files were not kept current, as indicated by Mr. Carter's lengthy recording dated February 29, 1976 to cover a period of about six months' duration, Mrs. Lo testified that her recording for the period from June 17 to July 6, 1976 was probably dictated in mid-July or toward the end of July.

Mrs. Lo testified that the material found in that paragraph came from Jennifer Popen although later Annals Popen spoke to her about it as well. In that paragraph Mrs. Lo wrote of Kim playing one parent against the other and being difficult to discipline in Annals Popen's absence. She wrote of Kim as an active child who often bumped into things and hurt herself, much to the concern of Annals Popen who cautioned Jennifer Popen to be careful of Kim lest the Society take her again. Mrs. Lo said that in that conversation with Annals Popen she reassured him that he should not have such concerns as to the possibility of Kim's removal by the Society.

Mrs. Lo testified that she did not know if this was an effort by Jennifer Popen to cover up any injuries which Mrs. Lo may have observed upon Kim. Mrs. Lo testified that she recalled having seen only one bruise upon Kim's body. That bruise was on one of her fingers. Jennifer Popen told her it was caused by Kim putting something into an electrical outlet. Mrs. Lo said that later she had seen Kim put something into an electrical outlet.

Mrs. Lo testified that until Kim's death she accepted Jennifer Popen's explanation with reference to any bruise which Kim may have suffered.

The next series of entries in Mrs. Lo's recording cover the period from July 7 to July 23, 1976, the period immediately following the birth of Jennifer Popen's youngest child, Karie.

Mrs. Lo testified, as she has written, that:

> "for the last couple of times [of Mrs. Lo's visits] Jennifer appeared very tired, cold and distant to [Mrs. Lo]."

Mrs. Lo testified that she noticed a dramatic change, presumably of a negative nature, in Jennifer Popen's attitude toward her after Jennifer Popen returned home with the baby. Mrs. Lo said she attributed that change of attitude to Jennifer Popen's being tired with two children and fearful that the Society would take the second child from her.

In explaining that opinion Mrs. Lo said she felt Jennifer Popen had not fully understood why Kim had been placed in the care of the Society and thus feared that the second child might be removed from the home even though there was no suggestion that he had been abused in any way.

In the light of Dr. Bates' testimony, it is interesting to note that neither in her recording in the Society's file nor in her oral testimony upon the Inquiry did Mrs. Lo make any reference to *post-partum* depression. Either she was not aware of it or did not recognize it as possibly being a factor in any change in the attitude of Jennifer Popen.

The absence of any such observation is all the more noteworthy upon reading the report of Dr. Selwyn M. Smith, Director of the Department of Forensic Psychiatry and Associate Professor of Psychiatry, University of Ottawa, dated December 12, 1977. Dr. Smith had examined and treated Jennifer Popen. In the specific area of interest in this Chapter of the Report he wrote:

> "Approximately five weeks before the death of Kim, another child, Kerry, was born on July 6, 1976. Kerry was a breech birth and Mrs. Popen left the hospital earlier than advised because she had been told that Kim had been crying for her and was not eating properly. Shortly after her return home, a number of problems ensued. Kerry developed a fever, had diarrhea, and was a very fractious and difficult baby. Mrs. Popen was up most of the night for several nights and described how the child would only sleep when it was held or rocked. In addition, Mrs. Popen was experiencing considerable pain associated with her breech delivery. She did have a 15 year old baby sitter to help her and Kim was spending some time with a neighbour. Nevertheless, Mrs. Popen did not feel well and was taking a number of sleeping tablets and analgesics."

Although those comments may be based upon information from an unreliable source, Jennifer Popen, they may very well be correct. The Society did not make any effort to ascertain the state of Jennifer Popen's health, physical or emotional, following Karie's birth. In my view that is another default by the Society, Mrs. Harvey and Mrs. Lo.

It should be noted that until Dr. Bates, the last witness to testify upon the Inquiry, there was no mention of *post-partum* depression and neither that expression or any similar expression appeared in any of the recordings in the files of the Society.

If Mrs. Lo felt that Jennifer Popen did not fully understand why Kim was in the care of the Society, she, Mrs. Lo, certainly had not done a very good job in her self-stated role of helping both parent and child.

If Mrs. Lo sensed that lack of understanding by Jennifer Popen and noticed that dramatic change in Jennifer Popen's attitude toward her, I am at a loss to understand why Mrs. Lo was able to write, as she did for example in the recording under date April, 1976:

> "The family situation keeps on progressing"

and under date May 6, 1976:

> "Since the home situation has been greatly improved..."

and under date from June 1 to 16, 1976:

> "The overall situation is under control."

In my opinion there was no factual basis for any of those statements.

Surely comprehension by both parents that Kim was in the care of the Society because they had, at least, not protected her from physical abuse would be basic to any successful resolution of the problems in the family which had led to involvement of the Society in Kim's case. Such comprehension would be required before Mrs. Lo could accurately write as she did in the three passages which I have just set forth.

In the recording for the period from July 7 to 23, 1976, Mrs. Lo wrote:

> "Jennifer looked very unhappy but she was not able to share it with me as to what was bothering her."

She continued to note that Jennifer Popen appeared to be upset when Mrs. Lo queried whether Annals Popen tended to take his frustrations out on the children.

From that it would seem that Jennifer Popen was not any more communicative than she chose to be and that Jennifer Popen, not Mrs. Lo, was in command of the situation. It would also seem that Mrs. Lo was, in that recording, indicating a suspicion that Annals Popen was the abusing parent. That was so even though she had testified as to having been told by Mrs. Harvey that Jennfier Popen was believed to have been the parent who had abused Kim and so should be the main recipient of the Society's attention. That was so even though she testified as to her own lingering suspicion that Jennifer Popen had abused Kim.

In the penultimate paragraph of the recording for that period, from July 7 to 23, 1976, Mrs. Lo wrote of having discussed with Jennifer Popen her fear of the Society. Mrs. Lo testified that she indicated to Jennifer Popen that the Society would not seek even a supervision order in respect of Kim upon the expiration of the six month period of her wardship granted to the Society on February 25, 1976 and that thus Mrs. Lo would no longer have a legal right to visit the Popen home. Mrs. Lo testified that at that time she believed that was the intention of the Society.

Nowhere in the Society's recordings is there any notation of any discussion between or among Mrs. Lo and Mrs. Harvey or others at the Society with reference to the formation of any such intention. Mrs. Lo's oral testimony made no reference to any such discussion.

Mrs. Dorothy Myers, office manager of the Society, testified that on July 26, 1976 she reminded Mrs. Lo that the Court's Order with reference to Kim's custody would expire on August 25, 1976 unless application were made for extension or variation of it. There was no evidence to indicate that Mrs. Lo then advised Mrs. Myers of the intention of the Society to permit the Order to expire without any order for continued supervision by the Society. Mrs. Myers continued her testimony to say that on August 3, 1976 she spoke to Mrs. Harvey and Mrs. Lo together about the matter and they instructed her to prepare an application for an order for supervision by the Society. Again there was nothing to indicate that

that instruction replaced any earlier contrary intention.

In that same paragraph of her recording Mrs. Lo wrote of Jennifer Popen's denial of the existence of trouble between Annals Popen and herself. Mrs. Lo in this area wrote that she had suspected that such trouble did exist.

Mrs. Lo did nothing else to satisfy herself as to the presence or absence of such trouble between Kim's parents. Solely on the basis of Jennifer Popen's denial of the existence of any such trouble Mrs. Lo was prepared to tell her that the Society would not seek an order authorizing the Society's supervision of Kim beyond August 25, 1976.

If there were any suspicion of trouble between the parents or if there were any suspicion of one or both of them taking out frustration on Kim, the Society should have fully explored each of those areas before arriving at any conclusion as to the future role of the Society in Kim's life.

In the last paragraph of that recording for the period from July, 7 to 23, 1976, Mrs. Lo wrote of Jennifer Popen's being loving toward Kim and Kim's smiling and singing. Mrs. Lo testified that she discussed that with Mrs. Harvey who stated that that observation by Mrs. Lo indicated that the timing of Kim's return to her home on May 27, 1976 had been perfect. Mrs. Lo testified that Mrs. Harvey and she felt that the situation in the Popen home was then under control.

Mrs. Lo testified that apart from Jennifer Popen's attitude during the one visit between July 7 and 23, 1976 she had not sensed any resentment by Jennifer Popen of her visits such as Mr. Vanderberghe had mentioned in his testimony or such as Mrs. Maughan had recorded and mentioned in her testimony.

In the last paragraph of her recording for the period from June 1 to 16, 1976, Mrs. Lo wrote of Jennifer Popen's criticism of Mr. Higgins and his conduct of the defence of the proceedings in the Court.

Thus it would seem Jennifer Popen was expressing negative criticism of just about everyone directly involved in the entire proceedings and the care of Kim. But she was not expressing such criticism to the person who was the subject or object of any particular statement of criticism. I have the impression from their respective testimony that neither Mrs. Maughan nor Mr. Higgins sensed that Jennifer Popen was criticizing her or him, nor did Mrs. Kuly sense that Jennifer Popen criticized her conduct.

Under date of July 26, 1976, Mrs. Lo wrote that she had telephoned the Popen home to arrange a time to see them, but she sensed that Jennifer Popen

"was trying to put me off."

Mrs. Lo testified that as a result of that and the coldness in Jennifer Popen's attitude mentioned in the prior recording for the period from July 7 to 23, 1976, she spoke with Mrs. Harvey and discussed with her the advisability of applying for an order for supervision of Kim by the Society. Mrs. Lo said that by then she did not feel that the Society's relationship with Jennifer Popen was stable enough and that Jennifer Popen would resist any help from the Society unless it were pursuant to an order of the Court. She testified that she felt continued supervision of the Popen family situation was necessary and that the Society could not leave the situation on August 26, 1976.

Mrs. Lo testified that when she first told Jennifer Popen and Annals Popen that the Society would not seek any Court order effective beyond August 25, 1976 she had told them that, nonetheless, she would continue to visit them on a friendly unofficial basis. She said that at that time they were receptive to that suggestion, but thereafter their attitude fluctuated from friendly and receptive to cold and distant.

None of that is set forth in Mrs. Lo's recordings in the Society's files. Nor do those recordings indicate that Annals Popen was directly involved in or even present at or part of any of the events or occurrences that Mrs. Lo mentioned in her oral testimony as forming a basis for her change of mind.

Mrs. Lo recorded under date of July 26, 1976, and testified orally that Mrs. Harvey and she decided that the Society should apply for a supervisory order before expiration of the wardship granted to the Society on February 25, 1976. She wrote that this was because Kim was a difficult child, a second child had been born and the home situation was not stable enough. There was no evidence to satisfy me as to the validity of the statement that Kim was a difficult child. I am satisfied as to the validity of the two remaining statements. That the home situation was not stable enough should certainly, in all the circumstances, have been the dominant reason for seeking a supervising order.

It would be in about this area of Mrs. Lo's recording that I would have expected to find some mention or consideration of the matters of which Dr. Smith wrote in December, 1977.

That change of attitude by the Society was at least as sudden and dramatic as any change of attitude by Jennifer Popen. If that change of attitude by the Society was justified, and it was, one must wonder about the tenuousness or validity of the earlier attitude, positions and decisions of the Society and the basis or bases therefor. One must also wonder how shallow was the knowledge that the Society had of the Popen family and how it was applied in deliberations by the Society as to its management of Kim's life, including Mrs. Harvey's decision that Kim was to be returned to her home.

Mrs. Lo did not record, but she did testify orally upon the Inquiry, that a reason for her wanting a supervisory order was her desire to be able to keep an eye on the family and to ensure that Kim was not abused.

If she had such a desire, I wonder how she could have concurred in any proposed decision by the Society to withdraw from the supervision of Kim on August 26, 1976. Any such desire must have been rooted in a belief or suspicion that Kim was still exposed to possible abuse and was still a child in need of protection under the terms of The Child Welfare Act.

I gather, from Mrs. Lo's recordings and her oral testimony, that during the period beginning on May 27, 1976, she had noticed various changes in Jennifer Popen's moods and attitudes. Some of the changes were observed in personal contact between Mrs. Lo and Jennifer Popen. Thus Mrs. Lo's assessment of them might have been more soundly based than her assessment of the significance of a very brief telephone conversation on July 26, 1976. To my mind Mrs. Lo's description of the various occurrences prior to July 26, 1976 would indicate that some of the earlier occurrences, such as those recorded under date of June and July, 1976, were of greater significance than the telephone conversation of July 26, 1976.

Mrs. Lo continued in her recording and oral testimony to state that on the evening of July 26, 1976, she visited the Popen home and, in the absence of Annals Popen, advised Jennifer Popen that the Society had decided to apply to the Court for a supervisory order in respect of Kim. Mrs. Lo testified orally, as she had recorded, that Jennifer Popen was apprehensive.

In her oral testimony she said Jennifer Popen did not understand why the Society would seek such an order. Under date of July 26, 1976, Mrs. Lo recorded that she had tried to explain to Jennifer Popen why the Society sought the order. She did not indicate what that explanation was, but she did write:

> "At 6:30 p.m. home visit was made to the Popens. Mr. Popen had not come back from work yet. Knowing that I was going to discuss something important, Jennifer had her friend Judy Vandenberghe there. She was very nervous and apprehensive."

In her oral testimony, Mrs. Lo said she had seen Kim that evening. She said Kim was climbing up and down on the couch and seemed happy. She said she saw nothing unusual about Kim.

Mrs. Lo continued her recording to indicate that on July 27, 1976, she again visited the Popen home to serve notice of the hearing of the Society's application returnable in Court on August 4, 1976. She recorded that Jennifer Popen was relaxed, but was barbecuing and spent little time with Mrs. Lo. Mrs. Lo recorded that Annals Popen said he understood why the Society was seeking the order and that that was "alright with them." Mrs. Lo in her oral testimony said that both Jennifer Popen and Annals Popen said they would not retain a lawyer to oppose the Society application and that they agreed with it.

Mrs. Lo testified that she had not seen Kim on July 27, 1976. She said that Kim was in the kitchen having her supper. There is no indication as to the source of Mrs. Lo's information to that effect. In the light of the pattern which I have mentioned earlier, that is to obstruct visitors from seeing Kim, I can only wonder if this was another part of that pattern.

Mrs. Lo advised Jennifer Popen and Annals Popen that on August 4, 1976 the Society would ask for an adjournment of the hearing. No reason for the adjournment was stated. Accordingly it was arranged that Jennifer Popen and Annals Popen would not attend Court on August 4, 1976, but Mrs. Lo would keep them advised of the proceedings.

No one of the Society who testified upon the Inquiry, except Mrs. Lo, explained in such testimony why it would be necessary to ask for an adjournment. In the light of the parents' indicating that they would not oppose the application it would seem to me that an adjournment was simply an unnecessary delay and, but for Kim's death, would have involved unnecessary expenditure of time of the Society's personnel in Court attendances and unnecessary use of what were obviously precious and scarce Court time and facilities. Mrs. Lo's explanation for seeking the adjournment was that the Court list for August 4, 1976 was heavy. But it would seem, on the evidence, that every day's list was heavy.

Mrs. Lo visited the Popen home on August 4, 1976 and, in the absence of Annals Popen, advised Jennifer Popen that the hearing had been adjourned.

I have read the transcript of the proceedings in Court on August 4, 1976. It indicates that Mrs. Lo represented the Society and advised Judge Nighswander that the original order for wardship would expire on August 23 (sic) and

> "due to the fact that a second child is born into this family at the beginning of July and Kim is a very difficult child, we ask for a supervision order."

She went on to say that she sought an adjournment:

> "since today we have quite a number of cases to be heard in this court."

In my view Mrs. Lo was less than candid when she advised the Court that Kim was a very difficult child and, by inference therefrom, the cause of the application being made to Court. On the basis of Mrs. Lo's testimony upon the Inquiry, the application to the Court was made only because of a change in the attitude and actions of Annals Popen and Jennifer Popen or one of them on learning that the order would expire on August 25, 1976 and the Society would not seek any extension or renewal of it.

Discussion between Judge Nighswander and Mrs. Lo in Court indicated that the next Court day would be August 30, 1976 and that there might be many emergency cases on that date. Therefore the Popen hearing was adjourned to September 13, 1976.

One portion of the transcript recording some of Judge Nighswander's comments or questions to Mrs. Lo and her responses is particularly significant. It is as follows:

> "Judge: ...This is the last court day until September, so is it the agency's intention to ask for a supervision order for the child--in other words, the child to be returned to the parents subject to the supervision of the Children's Aid?
>
> Mrs. Lo: Yes.

> Judge: Are you the worker with the family?
>
> Mrs. Lo: Mmhmm.
>
> Judge: Are they going to be in agreement with this, do you know?
>
> Mrs. Lo: Yeah, they are, un-huh."

Following that exchange the matter was adjourned and Judge Nighswander added:

> "...and the child committed to the care and custody of the Children's Aid Society of the City of Sarnia, County of Lambton, until that date."

This, in my view, indicates that Judge Nighswander was unaware that Kim had already been returned to her parents' home. Mrs. Lo certainly did not advise him that Kim had been returned to that home more than two months earlier.

Mrs. Lo testified that on August 4, 1976 Kim sat next to Jennifer Popen and that she, Mrs. Lo, had not seen any mark on her lip or any other injury to her. Mrs. Lo said she was eight or ten feet from Kim and did not hold or examine her that day.

In her oral testimony, Mrs. Lo said that any "examination" she made of Kim at any time was made rather casually

> "so the mother [Jennifer Popen] wouldn't get resentful."

Sometimes Kim would come to Mrs. Lo or sometimes Mrs. Lo would call her over. In such instances Mrs. Lo would then look at Kim while showing her something or playing with her.

Clearly those were not "examinations" in any sense of the word. They were restricted, by Mrs. Lo's own choice, to observation of those parts of Kim's body not covered by whatever clothing she was wearing and, even further, because they were conducted surreptitiously so as to avoid resentment by Jennifer Popen.

As to noticing anything which would alert her to any change in Kim, as Mrs. Harvey said she required, Mrs. Lo testified she had not noticed any unusual behaviour by Kim or any unusual aspect of the relationship between parents and child to cause her to suspect that Kim was being abused.

Upon the Inquiry, Mrs. Lo was shown some of the photographs of Kim's dead body. She testified that she had not, on August 4, 1976, seen any of the injuries shown in the photographs. She did testify that she had seen only one injury to one of Kim's fingers and that was some weeks earlier. She said that was the only injury to Kim she had ever seen.

Mrs. Lo testified that when she viewed Kim's body in the hospital on August 11, the mark on her lip was very obvious. She said that if the mark had been on Kim's face on August 4, 1976:

"I should have seen it."

Mrs. Lo testified that she had never suspected any abuse to Kim involving injury to her genital or anal areas or indeed abuse at all during this period of time and that she had never undressed Kim. She said that had she suspected abuse she would have undresed Kim.

That comment of course then begs the question as to Mrs. Lo's competence to recognize, let alone assess, the importance of any indicia of possible abuse of Kim.

Mrs. Lo testified that on August 4, 1976 Kim was quiet, but did not appear to be dazed.

Mrs. Lo had no further contact with the Popen family until she was advised on August 11, 1976 that Kim had died. She saw Kim's body that night. She noticed some of the injuries shown in the photographs. She said she was totally shocked by the injuries she did see.

On August 12, 1976, Mrs. Lo spoke with Jennifer Popen. She said Jennifer Popen told her Kim fell from the high chair the day before, apparently August 10, 1976, and appeared to limp and to be dazed. She said Jennifer Popen told her Kim fell from the porch.

Thus ended the Society's wardship of Kim.

What I have called the ring of tragedy surrounding Kim was complete. Kim was dead.

Chapter X

The Post-Mortem Examination

Dr. Patodia testified as to the post-mortem examination of Kim's body which he conducted on August 12, 1976 following a preliminary examination of her body on August 11, 1976.

Dr. Patodia had prepared a report upon that post-mortem examination together with diagrams illustrating the location of various injuries upon the body. That report and those diagrams were produced and received as exhibits upon the Inquiry.

In the post-mortem report, Dr. Patodia described external marks of violence which he had found on Kim's body. In his testimony upon the Inquiry he elaborated upon some of those findings as written in the post-mortem report.

In the first column below I set out the description of an external mark of violence as recorded by Dr. Patodia in the post-mortem report. In the second column I set forth any significant, to me, elaboration therein contained in his oral testimony upon the Inquiry.

External Marks of Violence as Recorded in the Post-Mortem Report	Elaboration thereon in oral testimony (if any)
1. Reddish purple contusions over the forehead near the hairline measuring 1.5 x 0.8 cm. and 0.8 x 0.5 cm.	1. These two contusions or bruises were more or less in the centre of Kim's forehead. Bruising changes in colour over a period of time -- perhaps from reddish blue, purplish, to brown to blue to yellowish, greenish and ultimately brownish.

Reddish purple is a sign of a rather recent injury.

Depending upon the training of the observer in the field of medicine, those injuries might be difficult to assess as being injuries worthy of observation and comment during Kim's life. A lay person might not have noticed them.

1. Reddish purple contusions over the forehead near the hairline measuring 1.5 x 0.8 cm. and 0.8 x 0.5 cm.

2. Rounded contusions over left cheek measuring 0.8, 0.5 and 0.2 cm. in diameter and these are reddish purple in colour.

3. 0.6 cm. clean incision with red base 4.5 cm. below the left earlobe.

4. Lower lip in the centre shows 0.8 x 0.5 cm. superficial irregular abrasion with crust on the surface. Base is brownish red. Smaller abrasion on the inner surface.

5. Left ear shows few small abrasions measuring up to 0.5 cm.

All of these injuries (numbered 1 to 6) occurred "within a few days of death -- within one to five days."

The injuries to the head were caused by light moderate degree of blunt trauma, as by a hand, nails or an instrument.
An abrasion is a superficial cut, more like a scrape. An incision is a clear cut by a sharp instrument.

6. Contusion with scratch marks over external surface of right ear.	
7. Reddish blue contusion (1 x 0.5 cm.) over left side of posterior chest in the posterior axillary line 7 cm. below the axillary fold. 8. Irregular purplish blue contusions (1 to 3 cm.) over dorsal surface of left elbow and forearm.	These injuries (numbered 7 and 8) were caused within a few days of death, that is within one to five days and could be caused by striking with a blunt instrument or by a similar force. This chest injury is about 7 cm. below the fold of the armpit.
9. Irregular contusions over palm of left hand along with few abrasions. 10. A small abrasion seen over palmar surface of little finger. 11. Left thumb shows discolouration of nail bed and slight crusting.	These injuries (numbered 9, 10, 11) were caused within a few days of death. These were caused by slapping or by a blunt instrument or by hitting the hand hard as with a ruler.
12. Purplish red contusion (2 x 1 cm.) over external surface of right elbow. 13. Irregular bluish contusion (4.5 x 2 cm.) over left buttock.	These injuries (numbered 12, 13 and 14) were caused within a few days of death, that is within one to five days, and could be caused by striking with a blunt instrument or by a similar force.

14. Purplish blue contusion (2 x 1 cm.) over right lumbar region just above the iliac crest.	The right lumbar region is, in lay terms, the small of the back.
15. Multiple bluish contusions measuring up to 0.8 cm. in maximal dimensions over mons pubis. 16. Irregular reddish contusions (0.5 cm.) above the vulva opening and left side of vulva. 17. Bluish contusions over left inner thigh.	These injuries (numbered 15, 16 and 17) were caused within a few days of death and were moderate to moderately severe injuries. They were not the result of diaper rash.
15. Multiple bluish contusions measuring up to 0.8 cm. in maximal dimensions over mons pubis.	The contusion over the mons pubis might have been caused by pinching as by pinching with fingernails.
16. Irregular reddish contusions (0.5 cm.) above the vulva opening and left side of vulva. 17. Bluish contusions over left inner thigh.	The contusions near the vulva and over the left inner thigh might have been caused by pinching or by hitting with a hand or some instrument.
18. Anal opening widely dilated (1.5 x 1 cm.) and patulous.	This injury was very noticeable. It would have been noticeable a week prior to Kim's death, but not necessarily if she merely stood naked in front of the observer. It would have been

noticeable to anyone changing her diaper. The anal opening was approximately three times the normal size for a child of Kim's age.
This injury would be caused by introduction of a foreign object into the rectum.
From microscopic examination, this injury was inflicted on repeated occasions over a period of several weeks or months.

Dr. Patodia concluded that all of the injuries resulting in external marks of violence were suffered at various times within the period of one to five days prior to death.

In summary, Dr. Patodia expressed the opinion that some of the external signs of violence enumerated in the post-mortem report -- particularly the injuries to the mons pubis area and to the internal surface of the thigh, would have been noticeable, even to a lay person, on the third or fourth day prior to Kim's death. He stated that he knew the injuries to the anus and vagina were present at that time, but would not be entirely external. His opinion was that the injury to the lip and cheek would have been there at that time and that the injury to the lip might have been a first injury to it or a re-injury to it.

Dr. Patodia testified that certain of the injuries described as external signs of violence, by themselves separately, were not significant, but all or even some taken together were of significance and would cause concern particularly if the observer were aware that Kim at some earlier time had been abused.

Dr. Patodia's post-mortem examination included an internal examination of Kim's body. In the first column below I set forth the relevant findings on that internal examination in the form as set forth in the written report of the post-mortem examination. In the second column, I set forth Dr. Patodia's oral testimony elaborating thereon at the Inquiry.

Findings on Internal Examination as Recorded in the Post-Mortem Report	Elaboration thereon in oral testimony(if any)
(e) Gastro-Intestinal System Spleen (size and weight) 42 gm. Medical surface in the lower area show blood clot on the surface. No laceration of parenchyma seen.	There was also haemorrhage around the spleen which is close to the left kidney and adrenal. No external mark on the body related to these injuries. They were caused within a few hours -- not more than one day -- of death. They were caused by a severe blow or trauma comparable to that which caused the brain injuries set forth below.
(f) Genito-Urinary System Adrenals (with weight) 6 gm. Haemorrhage seen around the left adrenal and no involvement of parenchyma seen. Urinary Bladder. Few millilitres of urine. Bladder mucosa normal. Kidney and ureters. Right 38 gm. Capsular surface smooth. Left 67 gm, with surrounding soft tissue. Haemorrhage seen around the upper half as well as on the capsular surface.	The adrenal sits on top of the kidney. No external mark on the body related to these injuries. They were caused within a few hours -- not more than one day of death. They were caused by a severe blow or trauma comparable to that which caused the brain injuries set forth below.

(f) Genito-Urinary System

Vagina and Vulva. Tear of hymen seen posteriorly with reddish colouration.

(g) Head, Skull and Osseous System.

Scalp Haemorrhages seen in the different areas of scalp. These are seen over anterior, vertex and posterior regions. Varies from (1.5 to 3 cm. Reddish brown in colour).
Meninges and Blood Vessels Subdural haemorrhage over the left parieto-occipital region and over right frontal lobe. These combined weighed approximately 7 gm.
Skull (with thickness) 0.4 cm. thick. No fracture of the vault or the base seen.
Middle ears and Sinuses Not examined. Remainder of Osseous System
No fractures seen.

(h) Nervous System

Brain (with weight) Hemispheres/Ventricles/ Pons/ Cerebellum

805 gm. Both hemispheres symmetrical. Subarachnoid haemorrhages seen over the frontal and parietal lobes, over the superior medial and lateral surfaces. Subarachnoid haemorrhage is seen also over the base of

This injury could be caused by the introduction of any foreign object within the vagina. As to the possibility of Kim having been raped there was no evidence of sperm.

The most important findings or the most serious injuries were seen within Kim's head.
Kim died of subarachnoid and subdural haemorrhaging, that is haemorrhaging beneath the dura and arachnoid membranes, the outer two of three membranes covering the brain between the outer surface of the brain and the inner structures of the bone.
In addition there was haemorrhaging above the bone and below the skin surface.
This was anteriorly, on top of the head and posteriorly.

Those three areas of injury were suffered at different times, the one on top of the head appeared to be fresh. These haemorrhages could have been caused a few days prior to Kim's death and possibly were not related to the subdural and subarachnoid

the brain. Cerebellum also shows subarachnoid haemorrhage with one area showing contusion. No intracerebral or ventricular haemorrhage is seen.
Medulla. Normal.
Pituitary Body Not examined
Pineal Body Not examined
Spinal Cord Normal.

haemorrhaging and the contusion to the cerebellum. Dr. Patodia felt the injuries causing these haemorrhages above the bone were inflicted within three days of death. Exterior marks relating to the interior haemorrhaging were not observed. These three areas of injury were caused by severe trauma -- severe blows. Dr. Patodia suggested all three areas of injury occurred within a few days.

For a variety of reasons the respective areas of injury might not have occurred long enough prior to death for any indication of injury to appear on the exterior surface of Kim's skin or may have occurred too deep within the head to present any proof on the surface.

No fractures of the skull bone were seen. Subdural haemorrhaging is within the brain cavity and causes pressure on the brain.

The subdural haemorrhaging, the subarachnoid haemorrhaging and the injury to the cerebellum in combination caused Kim's death.

Dr. Patodia estimated that the injuries which resulted in the subdural and subarachnoid haemorrhaging occurred within a few minutes or hours of one another and of Kim's death. He could not suggest the sequence in which they occurred. They were caused by really severe trauma as by Kim having been hit or thrown against a wall or having suffered similar serious injury.

Dr. Bates reviewed the report of the post-mortem examination prior to testifying upon the Inquiry. He expressed the opinion that if each of several of the injuries noted in the report was seen in isolation or separately from the others it would be possible to say that that particular injury had arisen from normal activity. Dr. Bates expressly mentioned the bruising on Kim's forehead, over her ears, on her chest, on her elbows and on her forearms as falling within that thesis.

He continued his testimony to say that only rarely would a child in normal activity sustain extensive bruising extending from the head down over the rest of the body such as Kim had sustained.

He expressed concern with respect to the discolouration of the nail bed of Kim's left thumb. He said that type of injury was not very common, but he did acknowledge that it too might have arisen from normal activity.

Dr. Bates expressed the opinion that the contusion over Kim's buttocks was not such as commonly arose from a child's normal play. He said that while a child in play may fall quite heavily on the buttocks, the presence of fat and muscle in that area tends to cushion any such fall and the impact of skin against bone.

He testified that the bruises in Kim's genital area, specifically those over the mons pubis, above the vulva and on the left side of the vulva, were such as would be found only rarely to have arisen from normal activity. He expressed the view that injuries in this area of a child's body should immediately raise concern when one considers the possibility that the child had been abused.

Dr. Bates felt that the bruising on Kim's thigh, especially on the inner thigh, would also be of some concern and raise suspicion that Kim had been abused.

Dr. Bates regarded the wide dilation of Kim's anal opening as being an injury of marked concern. He felt that that should immediately lead to suspicion that Kim had been abused.

Dr. Bates testified that, even apart from the injuries which he regarded as more serious in raising suspicion that Kim had been abused, particularly the injuries in the genital and anal areas of her body, he would have had concern that Kim might have been abused.

He testified that in most instances of sexual assault upon children there is no physical evidence of such assault, such as bruising. He concluded that immediately one would be aware that the abuse of Kim was different from the norm.

Dr. Bates expressed the opinion that if Kim's mother, Jennifer Popen, had not noticed the extensive bruising around Kim's genitalia she was negligent in her role as mother. That was his view apart from any consideration as to whether Jennifer Popen or someone else had inflicted the injuries upon Kim.

In summary of his assessment of the report of the post-mortem examination as it set forth external marks of violence, Dr. Bates testified that those external marks were consistent with injuries inflicted in a case of child abuse.

Dr. Bates testified that the injuries to Kim's brain, the subdural and subarachnoid haemorrhaging and the haemorrhage around the cerebellum, were certainly consistent with Kim's having been abused. He said that any such injury should place the possibility of abuse very high on the list of matters to be considered by anyone dealing with such a case.

Dr. Bates, while not surprised that the extensive bleeding in the skull was not visible externally, felt that such bleeding went along with extensive trauma to the head.

Dr. Bates expressed the opinion that the injury to the anus was an old injury, but he did not venture any estimate as to when it might have occurred. He testified that such an injury is hard to produce and would be caused only by the application of considerable force and the insertion of a large object into the anus on repeated occasions over a period of time. He testified that the infliction of that injury would be very painful. He felt that injury was indicative of wilfully inflicted force.

In his the opinion that the injuries to or in the area of Kim's hymen, spleen, left adrenal and left kidney were caused by trauma in those areas. He felt that the injury to Kim's spleen was caused by a direct blow to her abdomen or rib cage and that the injuries to the adrenal and kidney were consistent with abdominal trauma.

In conclusion of his testimony relative to the report on the post-mortem examination, Dr. Bates stated that Kim had been badly abused and badly beaten.

Dr. Bates expressed the opinion that Jennifer Popen's explanation that Kim had received minor injuries from falls and that she, Jennifer Popen, had struck Kim's head severely about a week before her death and that Kim became irritable and withdrawn and on the day of her death tumbled from the porch, was not consistent with the injuries which Kim had suffered. He based that opinion on the multiplicity of the injuries, their severity and the manner in which they were caused. He felt there was more than one blow to Kim's skull, very serious blows elsewhere on her body and genital molestation.

Chapter XI

Postlude to Kim's Death on August 11, 1976

While the care of Kim's brother, Karie, born July 6, 1976, is not directly a concern of this Inquiry the actions taken and opinions expressed by various persons with reference to his well-being immediately after Kim's death are of interest.

Similarly some of the opinions expressed by such persons after Kim's death, but relating thereto, are of interest.

Those actions and opinions demonstrate some of the weaknesses of the Society which led directly to Kim's death as a result of her mother's abuse upon her and her father's failure to protect her.

It is clear from the evidence of the Society's personnel that Karie's anticipated birth was, to the Society, an important factor in the decision as to when Kim would be returned to her home.

It is equally clear that the Society recognized that the effect of Kim's return home and Karie's birth, singly or in combination in whatever sequence, would create pressures within the family home and that the Society personnel would have to be especially vigilant to deal with those pressures and the problems flowing therefrom.

Responsibility for that special vigilance fell upon Mrs. Lo who was unfortunately inexperienced and untrained in the area of child abuse. Mrs. Lo looked to Mrs. Harvey for guidance. The quality of that guidance is suspect. Mrs. Lo did not receive the assistance which her own lack of skills required.

Mrs. Lo was "totally shocked" by the injuries she saw upon Kim's dead body on August 11, 1976.

On August 12, 1976, Mrs. Lo spoke with Jennifer Popen and "just listened" as Jennifer Popen told her how Kim had fallen from the high chair and from the porch on August 11. Mrs. Lo was asked if, having seen the injuries to Kim, including what Mrs. Lo, in modesty, called "a bruise, a mark on the child's lower abdomen", which I must conclude included or were the injuries to Kim's genital area, she accepted, as being true, Jennifer Popen's statement as to Kim's having fallen. Mrs. Lo responded merely "I didn't know" and said it might have been true.

When asked if having seen Kim's body she would not conclude she had been abused by one of her parents, Mrs. Lo responded "not at that time."

Mrs. Lo seems to have been one who could not or would not think ill of anyone. That may be a tribute to her in some situations. In the present instance it is not.

To my mind it is inconceivable that anyone who saw the external marks of injury to Kim might have thought they could all be suffered in a fall from a high chair, even if coupled with a fall from the porch.

That lack of comprehension increases when the thought that such injuries might have been caused by such an accident is expressed by someone such as Mrs. Lo who was aware that Kim had been severely physically abused on one or more occasions in the past and that, at least one member of the senior management of the Society, Mrs. Harvey, had expressed the belief that such abuse was inflicted by Jennifer Popen, rather than by Annals Popen who had pleaded guilty to the charge under section 40 of The Child Welfare Act. The Society, incorrectly in my view, seemed to interpret his plea as his acknowledgment that he had injured Kim.

In fairness to Mrs. Lo, I should note that while in the earlier phase of her testimony relative to the period from June 17 to July 6, 1976, she did say she "completely accepted" Jennifer Popen's explanation for Kim's injuries, or supposed injuries since she had not seen any of significance, her later testimony was that her opinion of Jennifer Popen's credibility changed after Kim's death. But on her own testimony it would seem that it had not changed all that much.

Mrs. Lo testified that on August 12, 1976 while she visited the Popen home, the infant, Karie, was in the living room. She said she did nothing with reference to his care "because Mrs. Vandenberghe told me that she was looking after the child."

Mrs. Lo testified that on August 12 and 13 she spoke with Mrs. Harvey about the advisability of taking Karie into the care of the Society. Her testimony was that they were

> "concerned about this child"
> and
> "were wondering, whether we should take the child into care."

She said her impression from that discussion was that there was not then sufficient evidence to take him into care and as well, he was being cared for by Mrs. Vandenberghe "so we felt we could wait for a while."

Mrs. Lo testified that later, on the evening of August 13, Mrs. Harvey telephoned to say she was going to take Karie into care. Mrs. Lo assumed Mrs. Harvey had received some further information and thus felt it was necessary to apprehend Karie. As it turns out Mrs. Harvey had no further information, but she had received two persuasive telephone calls from Dr. Duncan and Mr. Lang.

Mrs. Harvey's testimony in this area was that Mrs. Lo telephoned her at home during the evening of August 11 to advise her of Kim's death. She said the explanation for Kim's death was that she had fallen from the porch. She said the conversation was brief. Her testimony was that Mrs. Lo and she were

> "both terribly distraught...shocked and horrified and sad."

Mrs. Harvey continued her testimony to say that her first reaction to Mrs. Lo's call was

> "Oh my God, we've failed her."

With all sympathy for Mrs. Harvey and, through her, the Society, I can say only that that intuitive reaction was a correct assessment of what had occurred. They had failed Kim.

In response to a question as to whether she then believed Kim's death was an accident, Mrs. Harvey testified that, even then she did not know if Kim had died as a result of an accident.

Again, even more strongly than with reference to Mrs. Lo, I can only express wonderment that one with the general knowledge and experience in social work that Mrs. Harvey had, coupled with her knowledge of Kim's case and her belief that Kim had been abused by Jennifer Popen, should not have been aware of the likelihood that Kim's death was caused by abuse.

Perhaps clinically or legally at that stage one could not "know" it, but surely when asked if she believed Kim's death was the result of an accident she must have been able truthfully to express her belief rather than to retreat, as she did, to a denial of certain knowledge.

Mrs. Harvey testified that on August 12 she spoke with Mr. Lovatt and that she and Mrs. Lo spoke with a member of the Sarnia Police Force.

As to Karie's care, Mrs. Harvey seemed satisfied on August 12 that Mrs. Lo had visited the Popen home and learned that Mrs. Vandenberghe was caring for him. Mrs. Harvey expressed the view that with all of the activity relative to Kim's funeral and the attendant comings and goings it did not seem reasonable that anything would happen to Karie at that time.

Mrs. Harvey continued to testify that on August 12 the Society learned that Kim had died of abuse. She said that originally they were not given all of the information. When asked if the fact that Mrs. Lo had seen Kim's injuries, including particularly those to her genital area, did not lead to a realization that Kim had died as a result of abuse her response was:

> "We were suspicious but it hadn't been clarified and we were still talking in terms of was it possible that all of these injuries could have occurred from a fall from a porch and it just didn't seem reasonable, it must have been abuse."

In her testimony Mrs. Harvey indicated that the Society had asked for but had been refused a copy of the report upon the post-mortem examination. She did not say to whom the request was made. In any event it was not pursued. Again it would seem that the Society were far from forceful in pursuing matters in which they were interested. Surely a copy of that report would have been important to the Society in determination of the course to be followed by the Society with reference to Karie.

It seems that once again the Society, this time as represented by Mrs. Harvey, behaved as it did when Mr. Higgins imposed restrictions, if not prohibition, upon its performance of its duties, at that time by Mr. Carter. Then the Society meekly accepted the restrictions. This time the Society meekly accepted the refusal. No effort was made to seek the report through any other channel. No effort was made to obtain the advice and assistance of a solicitor. The Society seemed entirely to overlook that at the time of her death Kim was, as recently as August 4, 1976, by court order made upon the adjournment of the Society application for a supervisory order, "committed to the care and custody" of the Society until September 13, 1976.

The Society appeared to be unaware of provisions of The Coroners Act, 1972, particularly section 16(2) thereof which required the coroner to make certain information, including

> "the relevant findings of the post-mortem examination... available to the spouse, parents,...of the deceased and to his personal representative, upon request."

Admittedly, the Society did not specifically fall within that limited group, but by section 34 of The Child Welfare Act, it was the "legal guardian" of Kim for the purpose of her care, custody and control. While the coroner may not have been required by law to make a copy of the post-mortem report available to the Society he was not prohibited from doing so. I would think he would have done so if asked.

I remember too that Dr. McKinley, a coroner of the County of Lambton and Mr. Lang, the Crown Attorney were concerned for Karie's welfare. Their assistance might have been sought by the Society in this connection. It was not.

Mrs. Harvey in her testimony denied that she was reluctant to remove Karie from the family home. She may not have been reluctant, but she certainly showed no initiative or desire to act.

Mrs. Harvey's version of the involvement of Dr. Duncan and Mr. Lang was that they telephoned her on August 13, 1976. She testified that she explained to them that the Society had ensured that Karie was being cared for by someone else.

That too seems to be a distortion. The Society merely accepted that Mrs. Vandenberghe was caring for him. The Society took no initiative to arrange that. In fact Mrs. Vandenberghe cared for him for only a short period of time while Annals Popen and Jennifer Popen were both away from the home.

She testified that during the conversation with Dr. Duncan at about 4:30 p.m., she asked if Dr. Duncan would support the Society by testifying as to the need for taking Karie into care. She said that having received an affirmative response she decided to remove Karie and did so after requesting and obtaining an escort from the Sarnia Police Force.

Again this admittedly was an involvement by another agency, The Lambton Health Unit, initiated by that other agency rather than by the Society. It was also an instance of that other agency, as represented by Dr. Duncan, responding favourably and without hesitation to a request from the Society for support after Dr. Duncan had initiated the discussion.

Again another agency, the Sarnia Police Force, responded favourably and expeditiously to the request by the Society for assistance.

One can only wonder why Mrs. Harvey or anyone at the Society, if in doubt as to the basis for removal of Karie from the home, would not have sought advice and assistance rather than choose to await an expression of interest from outside the Society.

As to her conversation with Mr. Lang, Mrs. Harvey admitted that he too wanted the Society to remove Karie from the family home.

Mrs. Harvey acknowledged that, but for the calls of Dr. Duncan and Mr. Lang, she might have left Karie in the home,

> "until after the funeral, but not longer than that."

That answer in itself is a conundrum. How long "after the funeral" was Mrs. Harvey contemplating?

Dr. Duncan's testimony was that on August 12, 1976 she was worried about the safety of Karie in a home where one child had been beaten and had later died. Dr. Duncan said it was known in The Lambton Health Unit that Kim had been "murdered". Dr. Duncan said that in that conversation she spoke freely to discuss her concern for Karie's safety and that Mrs. Harvey agreed with her and was uncomfortable about the situation. She said that Mrs. Harvey advised her that she felt that under The Child Welfare Act there were not actually sufficient grounds to remove Karie. She said that when she suggested Mrs. Harvey seek advice from Mr. Lang, Mrs. Harvey said she had already spoken with Mr. Lang. Dr. Duncan said Mrs. Harvey agreed to remove Karie and she assured Mrs. Harvey

> "in spite of the apparent lack of any real reason to do so, that [she] would be prepared to state that in [her] opinion the baby, Kerry (sic), was in danger and in need of protection."

Dr. Duncan said that the reference to "lack of any real reason" related to the absence of evidence that any harm was directed towards Karie. She said that Mrs. Harvey had said there was not evidence that Jennifer Popen had ever abused Karie and that therefore, under The Child Welfare Act, it seemed doubtful that the Society had a legal right to remove a child who was well and did not appear to have been abused.

I agree with Dr. Duncan's assessment of the situation on August 12, 1976 that, while there may have been no evidence of abuse to or towards Karie, there was a need to act. I would add that, as of that date, Karie would seem at least to fall within the statutory definition of a "child in need of protection" in that his

> "life, health or morals...may be endangered by the conduct of the person in whose charge he is."

Mr. Lang's testimony was to the effect that in August 1976, the Sarnia Police Force informed him of Kim's death and of their suspicions and the investigation which had not then been completed. He said that he too was concerned for Karie's safety. He said that after his discussion with Inspector Ross he spoke with Dr. D. McKinley, who also expressed concern for Karie. Mr. Lang said that Dr. McKinley and he agreed that the danger was too great to permit them to "wait to see what was going to happen." He expressed the opinion that Karie was in need of protection right then. He said that he telephoned the Society and spoke with Mr. Lovatt or Mrs. Harvey, his memory was uncertain.

Advised that Mrs. Harvey testified that he spoke with her, he testified that he insisted that Karie be removed, but she demurred saying that no charges had been laid in connection with Kim's death and the Society could do nothing until charges were laid. He said that in response to that position he said that it might be too late if the Society were to wait for charges to be laid because the police investigation was incomplete and the eventual outcome of it was unknown. Mr. Lang said however that, upon conclusion of that telephone conversation at about 3:30 p.m., it was understood that the Society would remove Karie that day.

This again was an instance of another agency, really two, the Coroner and the Crown Attorney, initiating an approach to the Society and the Society not seeking out either of them. The

Society might reasonably have been expected to approach Mr. Lang. It is apparent from Mrs. Harvey's testimony that Dr. Duncan suggested she do so. I think it was a reasonable and practical suggestion.

While Mr. Lang originally testified that his conversation with Mrs. Harvey took place on Friday, August 15, 1976, he later amended that testimony and I am satisfied it was on Friday, August 13, 1976. That was the day on which Karie was removed from the family home by the Society.

As one looks at the position adopted by the Society, as represented by Mrs. Harvey after discussion with Mr. Lovatt, with reference to Karie after Kim's death there was no real change in the approach. They were insular. They did not seek advice or assistance or information from anyone. They were prepared to leave a child at risk. In Karie's case they would have done so while they waited for charges to be laid against one or both of the parents or until they had evidence of abuse to Karie. In Kim's case they did so because of failure to pursue the case properly immediately after June 17, 1975 and then because they returned her to her parents' home in May, 1976 on very tenuous bases. They seemed unaware of statutory provisions to be applied. There was no indication of any intra-Society "team" approach to the problem. Mrs. Harvey was still making the decisions without any real consultation with anyone.

In summary, while I accept the validity of Dr. Bates' testimony to the effect that one child of a family may be abused for some reason and another child of the same family remain unscathed, it seems to me that, but for the prompt, forceful and persuasive intervention of Dr. Duncan and Mr. Lang, abetted by Dr. McKinley, Karie too may have suffered injury in his home. He should not have been left so exposed while the necessary investigation was conducted and the appropriate decisions made.

Ontario

Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

His Honour
Judge H. Ward Allen

1982

VOLUME 2

Printed by A. P. Gordon, Queen's Printer for Ontario.

ISBN for complete set of 4 volumes: 0-7743-7734-8
ISBN for Volume 2: 0-7743-7736-4

Copies are available from:
Ontario Government Bookstore
880 Bay Street
Toronto, Ontario, for personal shopping.

Out-of-town customers write to:
Publication Services Section
5th floor, 880 Bay Street
Toronto, Ontario M7A 1N8
Telephone 965-6015
Toll free long distance 1-800-268-7540,
in Northwestern Ontario 0-Zenith 67200.

Cheques payable to the Treasurer of Ontario.

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Chapter XII

The Role of Jennifer Angela Popen

Heretofore I have attempted to set forth a somewhat chronological review of events and decisions affecting Kim's life. I have not paid specific attention to the position of individuals except in relation to some particular aspects of that chronological review.

I want now in this and the immediately following Chapters to examine the roles of various persons.

This Chapter will review the testimony and role of Jennifer Popen. In this section, I shall call her "Mrs. Popen."

I have already indicated that I found Mrs. Popen to be an unreliable witness. While harsh, Mr. Carter's stated view of her as being a "proverbial liar" and "her usual evasive self" is accurate. I think it is immaterial and unnecessary for the purposes of this Report to consider whether being such a person is rooted in or related to any psychiatric or other illness.

Mrs. Popen's testimony upon the Inquiry is not worthy of belief. That general condemnation applies to her testimony certainly when it is contradicted by the testimony of others whom I accept as reliable witnesses. It applies with equal force when some portion of her testimony upon the Inquiry is contradicted by another portion of her testimony upon the Inquiry or by her testimony in other proceedings. It applies with equal force when some portion of her testimony is so convoluted or distorted as to be unintelligble or self-contradictory. It applies with equal force when her testimony upon the Inquiry is just too incredible to be accepted. There were many examples of each of those four situations.

Mrs. Popen demonstrated an excellently selective memory. She testified only as to what she wanted to testify and claimed to have a good memory. In other areas she just did not remember even though some of the events she did not remember seemed to me to be ones she would more likely remember than some events she claimed to remember.

Mrs. Popen demonstrated guile. While saying that she and her husband had often, as any man and wife might do in the circumstances, discussed the question of his plea to the charge under section 40 of The Child Welfare Act disposed of in February and March, 1976, she always added that such discussion took place only with their solicitor. Clearly that rider was added to protect her invocation of solicitor-client privilege, which served to limit the testimony of her husband and herself upon the Inquiry.

I do not accept that they did not discuss that plea amongst other matters in the privacy of their own home. In my view however, the purposes of the Inquiry did not require any enlargement of that area of investigation of her role in the life of Kim.

For my present purposes, I am prepared to accept that Mrs. Popen was born in Jamaica where she met and married Annals Popen at a rather young age in January, 1973 and that she later joined him in Canada where Kim was born in January, 1975.

In view of my assessment of Mrs. Popen's credibility I am not prepared, in the absence of credible confirmatory testimony or evidence, to accept her testimony as to events in her life in Jamaica apart from her marriage to Annals Popen. I do not reject out of hand her testimony with reference to those events, but I do not think I need make any findings upon it; so I do not.

In taking that view in relation to the value of any such testimony in relation to the Report, I am not to be taken as indicating that the alleged events or circumstances should not have been of interest to the Society in their management of Kim's file or that the Society should not have attempted to investigate them.

The Society's personnel were aware of some, if not all, of the various stories told by Mrs. Popen as to her life in Jamaica. On the basis of testimony given by various expert witnesses as to matters which may be regarded as "danger signals" or as indicia of the possibility of child abuse, some of those stories must surely have been recognized as danger signals and thus should have been explored by the Society.

I appreciate that there would be difficulties in making any such exploration, but the Society made no effort to initiate or pursue it.

Mrs. Popen's testimony as to some of those events in Jamaica was subject to some of the frailties which led me to make the general condemnation of her testimony that I have set forth. Some of her testimony as to those events contradicted some statements which other persons testified were made to them by her. In some instances she acknowledged that she had made the statements attributed to her by other witnesses and that such statements were false.

As to the first recorded injury to Kim, that which resulted in her hospitalization in March 1975, Mrs. Popen gave various explanations to various people at various times.

On Kim's admission to hospital, Mrs. Popen told Dr. Thorp a variety of stories within a short time and very quickly. They involved statements variously that Kim had fallen from her crib or from a dresser drawer used as a crib. One story included reference to a baby-sitter being involved somehow in the injury. Another story included reference to Kim's having been lifted in such a way as to break her arm.

While Kim was in hospital, Mrs. Popen spoke with Dr. Singh. She told him that while she was changing Kim's diaper she heard a click in Kim's left arm while straightening it. She said she then brought Kim to the hospital.

While Kim was in hospital, Mrs. Hewitt in performing her duties as Acting Head Nurse, spoke with Mrs. Popen. Mrs. Popen in a short period gave Mrs. Hewitt a variety of explanations for Kim's injury. One explanation was that Kim's arm was broken while Mrs. Popen was dressing her; this was later refined by Mrs. Popen saying that Kim's arm had snapped while Mrs. Popen was pulling the arm through a sleeve. Another explanation was that Kim had fallen from a table.

Upon the application of the Society for wardship of Kim heard on February 25, 1976, when Judge Nighswander asked her the following questions she made the following replies:

> "Q. Yes. How did her arm get broken on the 22nd of March when the child was admitted?
>
> A. Well, that was an accident when she had the broken arm the first time.
>
> Q. How did that accident happen?
>
> A. Well, I had the crib down and I had her in her little sitter, and she was very sick.
>
> Q. I don't want to mix you up. I'm thinking now of the first time. The baby is only two months old the first time.
>
> A. Yeah, she fall that time.
>
> Q. Where did she fall from?
>
> A. Had her out of her crib in her little sitter.
>
> Q. She was in her sitter in the crib?
>
> A. Yeah. I had her in a sitter.
>
> Q. And she fell out onto the floor?
>
> A. Yeah.
>
> Q. And the second time--the 31st of August--how did those injuries take place? The injuries that I am talking about that I have been given in evidence. Everybody that observed them and the doctors say she had bruises on the elbow and both arms. She had a bruise on her cheek; a cut lip. In

> the left arm there was a fracture. There were bruises around her ankles. Did you see those happen?
>
> A. No."

Upon the Inquiry, Mrs. Popen acknowledged she had told a variety of stories to various doctors. She said some were true and some were false. In my view all were false in that they were essentially denials of her responsibility for Kim's injury.

Mrs. Popen's evidence as to that injury was that Kim was about six months old when she suffered the first broken arm. Clearly that is not so. Born January 11, 1975, Kim was only two months old when admitted to hospital with the first broken arm.

In her testimony Mrs. Popen denied that she had hurt Kim within six weeks of her birth. Mrs. Popen said merely:

> "The first time she had a broken arm was an accident."

But the transcript of the proceedings upon the Inquiry contains the following series of questions put to Mrs. Popen by Counsel to the Inquiry and her answers thereto:

> "Q. The injuries that Kimmy had as a small baby between her birth in January of 1975 and August of 1975, as far as you know today, you're responsible for all those injuries?
>
> A. For some of them, yes.
>
> Q. I'm talking about the broken arm when she was six weeks old, the, well the cut lip and the bruises?
>
> A. Oh, okay. Yes, as far as I know.
>
> Q. And she had a couple of cracked ribs?
>
> A. Right.

Q. Can you tell us whether or not you're responsible for those?

A. I would say I am.

Q. Do you remember that incident at all?

A. I don't remember the day, but sure I can remember, yes.

Q. Was it temper thing again?

A. Yes."

In cross-examination, Mrs. Popen denied she caused this injury. She said she left Kim sitting in a sitter on the edge of the crib, which was down and "the thing went over." She said she learned of the injury when giving Kim a bath because Kim cried each time Mrs. Popen touched her.

In further cross-examination upon the Inquiry, Mrs. Popen was asked a series of questions relative to her responses to Judge Nighswander. I think those questions in cross-examination and her answers to them are revealing of Mrs. Popen's standards of truth in testimony.

They were as follows:

"Q. Well, Mrs. Popen, I'm having some difficulty understanding why, when His Honour asked you a question about the break in her arm on the 31st of August you went and told him about her falling out of the crib?

A. Cause she did fall out of the crib, I just didn't tell him what else had happened.

Q. Yes. Well, you lied a little about how her arm was broken on the 31st of August, didn't you?

A. I told him that she fell out of the crib which was true.

Q. But that's not how she broke her arm?

A. No, but I didn't get into detail, so I wouldn't call that lying because I didn't get into it.

Q. Well, he asked about how the arm was broken and you didn't tell him?

A. Well, I told him she fell out of the crib, and it was true.

Q. Yes, but the part about how the arm was broken was not true?

A. No."

Upon the basis of the expert medical evidence presented by Drs. Singh, Thorp and Bates, I am satisfied and find that none of the explanations given by Mrs. Popen for Kim's broken arm in March, 1975 is compatible with the nature of the injury and Kim's age at the time. Each of her explanations was a lie.

That being so and in the utter absence of any evidence to support any suggestion that anyone else may have been involved in such injuries, I find that Kim's injury leading to her hospitalization in March, 1975 was caused by Mrs. Popen and it was not caused accidentally.

I am reassured in that finding by Mrs. Popen's testimony upon the Inquiry as to her temper and her subsequent abuse of Kim. Included in that testimony was the following question and her response thereto:

"Q. Oh, so that anything that happened to Kim up to March of 1975 was just an accident?

A. Not all of it, no."

I am satisfied that when Dr. Jumean saw Kim on June 6, 1975, she displayed the bruising of her arm, laceration of her lip and abrasion of her face which he noted.

In the absence of any reliable evidence even to suggest, let alone prove, that such injuries were the results of the actions of any other person and on the basis of my assessment of Mrs. Popen and her testimony, I am satisfied that those injuries were caused by Mrs. Popen and they were not caused accidentally.

I am similarly satisfied that at some time in June, July or August, 1975, Mrs. Hewitt did see Kim and that Kim displayed the black eyes and bruising around the face which Mrs. Hewitt described.

For the reasons already stated, reinforced by Mrs. Hewitt's testimony as to Mrs. Popen's behaviour at that time, I am satisfied that those injuries were caused by Mrs. Popen and they were not caused accidentally.

By reason of the uncertainty expressed by Mrs. Hewitt as to the date on which she observed those injuries, I am unable to determine whether they were the same injuries as were seen by Dr. Jumean on June 6, 1975 or whether they were a separate and distinct group of injuries or whether they were suffered coincidentally with the fractures of Kim's ribs revealed by X-rays taken by Dr. McCrudden on September 1, 1975.

As to those fractures of Kim's ribs, on the basis of Dr. McCrudden's testimony, I am satisfied that they ocurred three to four weeks prior to September 1, 1975.

For the reasons I have already stated I am satisfied that those fractures of Kim's ribs were caused by Mrs. Popen and they were not caused accidentally.

For the same reasons I am satisfied that all of the injuries to Kim revealed upon her admission to hospital on August 31, 1975, were caused by Mrs. Popen and were not caused accidentally.

For the same reasons, and notwithstanding Mrs. Popen's testimony denying that she caused some of the injuries revealed upon the post-mortem examination of Kim's body by Dr. Patodia on August 12, 1976, I am satisfied that all of the injuries revealed upon that post-mortem examination, including those specifically or generally denied by Mrs. Popen, were caused by Mrs. Popen and were not caused accidentally.

I am further satisfied that those injuries were suffered by Kim within the various periods of time which Dr. Patodia estimated, that is, the majority of the injuries were suffered within one to five days prior to Kim's death on August 11, 1976, the vaginal injuries were suffered within a few weeks prior to death and the rectal injuries were suffered over a prolonged period of several weeks or months prior to death. On the basis of Mrs. Maughan's evidence as to her observations of Kim on August 8, 1976 it would seem that injuries to Kim's head and the parts of her body which would have been exposed to view by Mrs. Maughan were suffered after Mrs. Maughan's visit of August 8, 1976 or even after Mrs. Kuly's visit of August 10, 1976.

Chapter XIII

The Role of Annals Ambrose Popen

In my view, Annals Popen is a pathetic figure, but not deserving of pity. None of the evidence presented upon the Inquiry satisfies me that he inflicted any injury upon Kim.

I am satisfied that for whatever reasons, naivety, stupidity, wilful blindness or some other reason, he was not prepared to recognize the significance of what was happening in his home. At least by February 25, 1976 when proceedings in the Provincial Court (Family Division) of the County of Lambton, were virtually complete he had heard the extent of the injuries suffered by Kim to that time.

The question remains as to whether he knew or ought to have known that Kim suffered the various injuries which are set forth in earlier portions of the Report with the possible exception of any inflicted upon her on August 11, 1976.

In my view the validity of the Report does not require any comment by me upon that issue.

I am satisfied that the frequency, severity and nature of the various injuries should at least have aroused suspicion in his mind as to the causes or sources of the injuries and the truthfulness of whatever Jennifer Popen told him with reference thereto.

I find it unbelievable that he could be led to think that he broke Kim's arm by having hit her with a thrown slipper.

I am satisfied that he wanted Kim to be returned to his home. For that reason and probably other reasons, including the truth of the allegation that he failed to protect Kim, he was prepared to plead guilty to the charge against him under section 40 of The Child Welfare Act and to attempt thereafter to fulfill the terms of the probation order against him and also any requirements which he felt were imposed upon him as a result of the decision of Judge Nighswander upon the application of the Society for wardship of Kim.

I am satisfied that from May 27, 1976 until her death, Annals Popen failed to take adequate steps to protect Kim. For some reason he was unable or unwilling to take those steps.

I have not relied upon the testimony of Annals Popen. I decided it was unreliable. He claimed to have a poor memory. He was not prepared to recognize what was happening in his home. He gave no adequate explanation for that.

In Chapter 4 of the Report I have reviewed the proceedings in the disposition of the charge of manslaughter laid against Annals and Jennifer Popen. As directed by the Judge sitting in the Court of General Sessions of the Peace at Sarnia on December 7 and 8, 1981, upon a new trial of Annals Popen ordered by the Court of Appeal, the jury returned a verdict of "not guilty."

Chapter XIV

The Role of Mabel Harvey

Apart from Jennifer Popen and Annals Popen, Mabel Harvey was the most important person in Kim's life from June 17, 1975 until Kim's death on August 11, 1976.

Mrs. Harvey's involvement in Kim's life, and its tragedy, began on June 17, 1975 when Mrs. Saul reported to her orally and with some written notes upon the visit made that day by Mrs. Saul, Mrs. Hoad and Police Constable Gander to see Kim.

I am satisfied that Mrs. Saul adequately informed Mrs. Harvey of the particulars of that visit and the concern that Mrs. Saul felt. In addition, Mrs. Saul's report to Mrs. Harvey contained comment upon the attitude of Jennifer Popen and of the relationship between Jennifer Popen and Annals Popen. The written portion of Mrs. Saul's report to Mrs. Harvey contained latterly the following sentences:

> "I told Jennifer that C.A.S. would be around to see her in a week or so, but she was not pleased Sbout this. I believe it would be advisable to take a L.H.U. nurse and introduce her whether Jennifer wants one or not. As well this defensive hostile young mother should be closely supervised considering the history of the recent six weeks."

Mrs. Saul testified that the portion of the Society's file recording purporting to have been prepared by her as her report and recommendation upon her visit was an accurate reproduction of her notes although some particulars of the Popen family appearinS at the end of the recording attributed to her, while known to her, had not been written by her. They were as follows:

"Jennifer Popen - 18 years (quite immature) - hostile, defensive.

Dr. Jumean - family physician - 337-3729.

Annals Popen - 30 ish in age, meek, bows down to wife's hostility, is said to drink heavily, is on strike at present."

Mrs. Saul had not seen the typewritten recording until she was preparing to testify upon the Inquiry and she had not seen her handwritten notes since giving them to Mrs. Harvey on June 17, 1975. The handwritten notes were not available to the Inquiry. It was presumed by various members of the staff of the Society who testified that they were destroyed when the typewritten record was prepared. Thus her purported confirmation of the accuracy of the typewritten version must be limited to being based on her recollection of what she had written by hand and is thereby made subject to the frailties or vagaries of her memory of events which occurred more than three years before she testified upon the Inquiry.

There may very well have been other errors, omissions or additions which Mrs. Saul did not notice. There is no direct evidence to suggest it, but it may very well be that the particulars of the Popen family which Mrs. Saul says were added to her written report were added by Mrs. Harvey to Mrs. Saul's handwritten notes and thus were typed as part of them.

In her oral testimony upon the Inquiry, Mrs. Saul elaborated upon the nature of her report to Mrs. Harvey and Mrs. Harvey's response to it. Mrs. Harvey's testimony upon the Inquiry did not challenge or deny the accuracy of Mrs. Saul's testimony.

In her summary to Mrs. Harvey she explained her concern for Kim's welfare. She said she felt there was a good possibility that Kim had been abused and that she would be abused again. She felt the situation was one of danger for Kim, but not one of immediate danger. Her concern for the future was based on Jennifer Popen's reaction to Mrs. Saul and on Kim's restiveness while with Jennifer Popen.

While she had a real concern that Kim had been abused, she was unable at that time to suggest who had abused her. As to the relationship between Jennifer Popen and Annals Popen, Mrs. Saul felt that Jennifer Popen was the dominant partner, but that did not enable Mrs. Saul to determine who was abusing Kim.

Mrs. Saul's report to Mrs. Harvey was a detailed report. She said her recommendation to Mrs. Harvey was that the case should be assigned at once to a long-term worker. Mrs. Saul's opinion was that it was obvious that the Popen family would require the long-term involvement and assistance of the Society.

Mrs. Saul was at that time in her career employed by the Society to conduct investigations and counselling in matters requiring short-term involvement by the Society.

Mrs. Saul testified that Mrs. Harvey accepted her report and recommendation and mentioned the possibility that the case would be assigned to Mr. Carter, a long-term worker. The name of no other long-term worker was mentioned by Mrs. Harvey to Mrs. Saul.

Mrs. Saul's opinion was that with the decision that the case required long-term involvement by the Society a file should have been opened. She had prepared a handwritten memorandum upon her visit and her recommendation. She intended that memorandum to be typed and then placed in the file. She gave that handwritten memorandum to Mrs. Harvey. Mrs. Saul did not feel that she had any responsibility in connection with the administrative work necessary to open the file, document the intake of the case or to effect the assignment of the case to Mr. Carter or anyone or even to arrange for the typing of her report for inclusion in the file. Her opinion was that, while her short visit and investigation had been productive, a lot more remained to be done and to be discovered. She believed the case would require close long-term supervision.

Mrs. Saul testified that on June 17, 1975 she had directed her attention only to the possibility of Kim's having been abused at a time relatively concurrent with the visit of Police Constable Gander to the Society. She said that the worker to whom the case was to have been assigned after her discussion with Mrs. Harvey would have been responsible for investigation of any suggestion of any prior instance of abuse to Kim. By reasonable inference that would include enlargement of Mrs. Saul's inquiries as to the June 16, 1975 report to the Sarnia Police Force. As indicated in the portion of Mrs. Saul's notes which is set forth above, Mrs. Saul was made aware of the suggestion that Kim had been abused during "the recent six weeks." In her oral testimony she said that Police Constable Gander had mentioned that Kim had suffered earlier injuries. Mrs. Saul gave Mrs. Harvey all of that information.

I am satisfied that on June 17, 1975 Mrs. Harvey assumed responsibility for the preparation of all documentation and the performance of all acts necessary to record the fact of the intake of Kim's case, the opening of the file, the entry of Mrs. Saul's report into the file together with any other relevant information and the assignment of the case to a long-term worker, perhaps Mr. Carter.

The members of the Farina Committee testified that Mrs. Harvey's failure to effect the assignment of Kim's care on June 17, 1975 was a serious mistake. The gravity of that mistake was apparent throughout the Inquiry.

It was not Mrs. Harvey's only mistake at that time. She, and thus the Society, did not comply with Regulation 86, Revised Regulations of Ontario, 1970, being the Regulation made under The Child Welfare Act. Section 14 of that Regulation requires children's aid societies to record and investigate complaints respecting children in need of protection. Any such complaint is to be recorded by a children's aid society within twenty-four hours of its receipt. Within twenty-one days of recording such a complaint, the children's aid society must investigate the complaint and record a report determining whether or not the child mentioned in the complaint is in need of protection. If the child is in need of protection, the children's aid society must set forth in that report a tentative plan for the child's welfare and the steps taken to implement the plan. If the child is not taken into protective custody, the children's aid society must review the case within sixty days after the complaint was recorded.

Mrs. Dick, Mrs. Saul and Mrs. Hoad acted promptly to respond to Police Constable Gander's report to the Society. Mrs. Dick assigned Mrs. Saul and Mrs. Hoad to accompany Police Constable Gander. They did accompany him and Mrs. Saul reported promptly to Mrs. Harvey. All of that was within a few hours of Police Constable Gander's visit to the Society.

Nothing that Mrs. Dick did constituted a 'record' of the complaint. The Society, as represented by Mrs. Harvey, Mrs. Saul and Mrs. Dick, was aware that what was done that day did not constitute an investigation of the complaint. It was recognized by them as merely the initial response of the Society to the complaint respecting Kim. It was only the first exploratory phase of an investigation. No effort was made to investigate the reports of earlier injury and hospital treatment.

No "record" of that initial response was prepared. Mrs. Saul's notes could have been the basis for that record, but they were not in themselves the "record" contemplated by the Regulation.

There was no recorded determination as to whether or not Kim was in need of protection. Mrs. Saul's notes and her oral report to Mrs. Harvey were tentative. Mrs. Saul was concerned. She felt the case would merit the long-term involvement of the Society. Mrs. Harvey accepted Mrs. Saul's recommendation that Kim's case be assigned at once to a member of the long service team of the Society's workers.

Upon receipt of Mrs. Saul's notes and oral report, Mrs. Harvey assumed full personal responsibility for the case. Thus she was responsible for the recording of the complaint and the investigation of it. She was responsible for the preparation and recording of the report of that investigation and the determination whether or not Kim was in need of protection.

Thus, Mrs. Harvey failed to comply with the provisions of Section 14 of Regulation 86.

If the investigation had justified a determination that Kim was in need of protection, Mrs. Harvey would have been responsible for the preparation and recording of the tentative plan for Kim's welfare. In retrospect it would seem that if the appropriate investigation had been undertaken and completed, the Society would probably have been justified in determining that Kim was a child in need of protection.

No such tentative plan was recorded. In the circumstances of the investigation being incomplete and no determination of Kim's need for protection having been made, the absence of a recorded plan for her welfare is understandable in June 1975. But that does not excuse Mrs. Harvey who bears responsibility for the absence of such a plan.

But the recording in the Society does not set forth any plan for Kim's welfare at any time. After August 31, 1975, Mrs. Harvey was not responsible for the initial recording of such a plan, but, as Mr. Carter's supervisor, she was responsible to ensure that he prepared and recorded such a plan.

By August 31, 1975 Kim was in the *de facto* care of the Society. The Society had determined by then, or soon after, that Kim was in need of protection. A plan for Kim's welfare should have been prepared and recorded within twenty one days after August 31, 1975. It was not done. As supervisor, Mrs. Harvey was responsible for that failure to comply with the Regulation.

The members of the Farina Committee testified as to a lack of knowledge within the Society as to the provisions of The Child Welfare Act. At best this would seem to be one example of such lack of knowledge.

I have said Mrs. Harvey's testimony did not deny or challenge Mrs. Saul's testimony. Mrs. Harvey did offer some suggestions as to some further details of her discussions with Mrs. Saul, but they were vague and they were not supported by any other testimony.

In various areas of her testimony, Mrs. Harvey claimed to have difficulty in remembering the details of various events because they had happened so long ago. I can sympathize with her in that dilemma. I have recognized it when I commented upon my suspicions as to the validity of Mrs. Saul's testimony that the typewritten recording in the Society's files under date of June 17, 1975 was an accurate transcription of her handwritten notes.

But Mrs. Harvey had at least one specific occasion when she could have prepared some notes which would have been based on relatively recent memory of the events of June 17, 1975 and immediately thereafter. That occasion was the involvement of the Society in Kim's life on August 31, 1975 and immediately thereafter. At any time thereafter Mrs. Harvey could have made notes that could have had more validity than her admittedly poor memory after the passage of three years.

In my opinion the events of August 31, 1975 were such that Mrs. Harvey should then have prepared a full and accurate record of what occurred on June 17, 1975 with a frank statement as to the failure of the Society, as represented by her, to take steps then to investigate the allegations of earlier incidents of injury and the report of June 16, 1975 and generally to provide adequate service to Kim and to her family.

Mrs. Harvey had a second specific occasion when she should have been stirred to prepare some written record of the events of June 17, 1975. That second occasion was Kim's death slightly more than eleven months after August 31, 1975. Admittedly such notes would not have the same value as notes made in June or September, 1975, but they would be better than unsupported memory in mid-August, 1978. They would not have helped Kim. They may have been of assistance to the Society and others, including those engaged upon this Inquiry.

No one who testified upon the Inquiry knew where Mrs. Saul's handwritten report to Mrs. Harvey along with Mrs. Dick's recording of her activity upon Kim's case on June 17, 1975 had been from June 17, 1975 until they were reduced to typewritten form for inclusion in the Society's files. Mrs. Dick found her notes of June 17, 1975 in the vault at the Society's office in September, 1975. I interpret

Mrs. Dick's testimony to mean that she found Mrs. Saul's notes of June 17, 1975 at the same time. Mrs. Dick testified that she then arranged for a typist to prepare a typewritten transcript of both sets of notes.

On the basis of Mrs. Saul's testimony, direct and uncontradicted, that she gave her handwritten notes to Mrs. Harvey on June 17, 1975 I find that those notes remained in Mrs. Harvey's possession and control from June 17, 1975 until reduced to typewritten form in September, 1975 on Mrs. Dick's instructions. I find that they were then destroyed or discarded.

On the basis of Mrs. Dick's testimony, not as certain as Mrs. Saul's, but sufficient, I am satisfied to a similar effect with reference to Mrs. Dick's notes of June 17, 1975. Mrs. Dick gave them to Mrs. Saul who then gave them to Mrs. Harvey who retained them. At some time after August 31, 1975, Mrs. Dick found them in the vault at the Society's office and had them reduced to typewritten form. They were then destroyed or discarded. Mrs. Dick could not recollect where she had located them in the vault in September, 1975.

On the basis of Mrs. Saul's direct evidence uncontradicted, and indeed corroborated by Mrs. Dick's testimony as to a conversation she had with Mrs. Harvey on June 17, 1975, I find that Mrs. Harvey advised Mrs. Saul of her acceptance of the recommendation that the case be assigned to a long-term worker and mentioned Mr. Carter as a possible recipient of that assignment. Mrs. Dick's version of her conversation with Mrs. Harvey was somewhat more definite that Mr. Carter was the one to whom the case would be assigned.

I am satisfied and find that on June 17, 1975 Mrs. Harvey assumed direct responsibility for Kim's case. Mrs. Harvey alone was responsible for the handwritten notes of Mesdames Dick and Saul, which she received on June 17, 1975, being placed in the vault at some time without any further action. Nothing was done to make any entry in the file index to record the opening of the file. Nothing was done to record those notes in the file. Nothing was done to effect or record the assignment of the case to a long-term worker such as Mr. Carter. In her testimony Mrs. Harvey accepted that responsibility and whatever might flow from it. Indeed her position was that Mrs. Saul had been acting on her instructions to prepare the handwritten notes which Mrs. Harvey said were destroyed when transcribed in typewritten form as they now appear in the Society's files.

Thus on June 17, 1975, Mrs. Harvey failed to fulfill her responsibility. Having relieved Mrs. Saul of further involvement in the case, Mrs. Harvey failed to complete whatever was required administratively to record the case, to open the file, to put the appropriate notes in the file and to assign the case to a long-term worker for further appropriate investigation of all instances of possible abuse and for appropriate long-term service to the Popen family.

As a result of Mrs. Harvey's failure to perform her appropriate duties on June 17, 1975, Kim's case was unattended until the end of August, 1975. Notwithstanding the well-expressed concerns of Mrs. Saul and Mrs. Harvey's acknowledged recognition of the validity of those concerns, nothing was done by the Society in respect of Kim's case. There was no investigation of any of the instances of alleged injury and possible abuse. There was no investigation to determine the situation in the Popen home. There was no investigation to seek to determine whether Kim might be a child in need of protection under the terms of The Child Welfare Act. No service to the Popen family was provided by the Society.

Mrs. Harvey testified that normally upon receipt of a report such as she received from Mrs. Saul on June 17, 1975, she would have had someone immediately begin an investigation of the situation in the home. That would have been an appropriate action by Mrs. Harvey. It would have required her continued attention.

Even on the basis of Mrs. Harvey's evidence I am satisfied that her failure to fulfill her duties and thus those of the Society from June 17, 1975 until August 31, 1975 was of serious importance in the development of Kim's tragedy. Had Mrs. Harvey, and thus the Society, given to Kim's case the attention, investigation and service which it deserved on and immediately after June 17, 1975 the serious injuries of July and August, 1975 and the injuries and resulting death of August, 1976 might have been prevented.

Mrs. Harvey in her testimony relative to what she regarded as the difficulties placed in the way of the Society from August 31, 1975 until February 23, 1976 was strong in her statement that those difficulties prevented the Society from doing the work with the Popen family which the Society knew had to be done. She said that contributed to the end result. In my view, the failure of Mrs. Harvey and thus of the Society from June 17 to August 31, 1975 contributed at least equally to that end result.

Mrs. Harvey acknowledged in her testimony that had the Society been providing service to the Popen family from June 17, 1975 and if Kim were nonetheless injured as she was found to be on August 31, 1975, the view of the Society as to the August incident would have been quite different. Answers given by Mrs. Harvey are informative in that regard.

When asked how the Society would have viewed the case differently in such circumstances she replied:

> "A. Well, if you had put in three months of case work, which I would have expected to have been on an intensive basis and which is what I had planned and this happened, then I wouldn't have sent her back.
>
> Q. You wouldn't have sent her back?
>
> A. No.
>
> Q. Why would you not have sent her back?
>
> A. Well, if the three months of intensive work had ended up with the child in the hospital then I would say, no."

That testimony shows the importance of Mrs. Harvey's default in June, 1975. I realize that various conditions were contained in that series of responses and thus it was theoretical. Nonetheless it is fair to say that Mrs. Harvey's default had an effect which continued beyond June, July and August 1975.

Mrs. Harvey's responses tell me she knew that.

Mrs. Harvey testified that Kim's case had been discussed at a meeting of the workers of Team I, the team responsible for short-term cases. She said that meeting of Team I had been held on June 17, 1975 at 1:30 o'clock in the afternoon. She said she was pretty sure the case was discussed at that meeting because she was so concerned about the seriousness of the situation.

Mrs. Saul, a member of Team I, disagrees with Mrs. Harvey. She says a meeting of Team I would have been held on June 17, 1975, but in the morning before she went to see Kim. She insists Kim's case was not mentioned at that meeting. She said that if a decision had already been made to assign a case to the Long Service Team, that case would not necessarily be discussed at the Short Service Team meeting. Her recollection was that she had been assigned to see Kim after the meeting on that day.

Mrs. Dick also a member of that Short Service Team, testified that Kim's case was not discussed at a Team I meeting. She felt that might have been because of Mrs. Harvey's intention to assign the case to a long-term worker because it would require long-term involvement by the Society.

The third member of Team I did not testify. Minutes of Team I meetings for the relevant time period were available. They do not support Mrs. Harvey's testimony. They contain no mention of Kim's case until the meeting of September 2, 1975 when the case was formally opened.

While it may appear unnecessary and irrelevant to reach any conclusion on the point, I prefer the testimony of Mesdames Dick and Saul to that of Mrs. Harvey and find that Kim's case was not discussed at any meeting of Society's workers on June 17, 1975 nor at any time thereafter before September 2, 1975.

Mrs. Harvey also testified that Kim's case had indeed been opened by the Society in June, 1975. She based that on an entry made by Mrs. Dick in a log of cases. That log is not a printed form. It appears to have been prepared by someone hand drawing lines on plain paper so as to create eight columns with various handwritten headings. The entry in that log relied on by Mrs. Harvey to justify her statement that the case was opened was as follows:-

"Date	Worker	Intake Identification	Referred by	Referred to	21 Day Revised	Disposition	60 Day Revisted
June 17	AD	Popen, Jennifer and Annals - possible child abuse of Kim age 6 months	Detective Gavin (sic) "abuse"	HC		open to HC Sept/75	Team II June Review No. 1"

The complete accuracy of that log, like so many other records of the Society must be questioned. The entry preceding the reference to Kim is dated June 16. The entry following the reference to Kim is dated June 18. But the next entry, originally dated June 19, was changed to June 17th and the next item was also dated June 17.

All five of the entries on the page from that log introduced as an exhibit upon the Inquiry were made by Mrs. Dick who was then employed as an intake worker. Mrs. Dick testified that was a page from a daily log of calls coming in to the Society to enable Team I, responsible for short-term investigation and service, to know what cases were current in the team and who on the team was responsible for each case. Mrs. Dick said that she had written the information in the first five columns on June 17 as well as the words "open to H.C." and "Team II" in the last two columns. She said those latter entries were merely to record Mrs. Harvey's intention to assign the case to Mr. Carter and to record that the case would no longer be a responsible of Team I. Mrs. Dick made the remaining notations in September, 1975.

On all of the evidence as to what seems to me to have been a cumbersome uncoordinated system to open files in the Society, I do not accept Mrs. Harvey's assertion that Kim's case was opened by Mrs. Dick's notation on the log. None of the other papers or cards ordinarily associated with a case opening were prepared, the case name was not placed in the index of files and the notes which Mrs. Saul and Mrs. Dick prepared for inclusion in the file were not transcribed, but, for all practical purposes, were mislaid or lost.

Mrs. Harvey was simply being difficult with counsel to the Inquiry when she adopted that position. It was not supported by the facts and she knew it.

She attempted to justify the absence of a document entitled "Record of Inquiry" in June, 1975 by saying it would not be needed during a "brief service case" which, she said, was any case which could be completed within twenty-one days. That reference was merely obfuscation. On June 17, 1975 she knew and acknowledged to Mrs. Saul and to Mrs. Dick that Kim's case would not be resolved within twenty-one days and would require the services of someone on Team II, the long service team.

Mrs. Harvey was not being frank even with herself to suggest that Mrs. Dick's notes on the log supported her assertion that Kim's case had been opened in the Society on June 17, 1975. Even by whatever standards the Society may have applied in June, 1975 those notes did not constitute a case opening. On Mrs. Dick's evidence the log was maintained to assist the members of the Short Service Team seek some control of cases assigned to workers on that team. Kim's case was not such a case. Only by chance would that log bring Kim's case to the attention of any member of the Long Service Team.

Mrs. Harvey showed some disdain for proper procedures when she said that it was practically impossible to use the form entitled "Record of Inquiry." That is a printed form apparently prepared by the Ministry of Community and Social Services or the Association of Children's Aid Societies for use by children's aid societies. Despite Mrs. Harvey's comment upon its usefulness that was the form used by

Mrs. Dick when she formally opened Kim's case in the Society on September 2, 1975. Mrs. Dick, Mr. Carter, Mrs. Lo and even Mrs. Harvey herself were able to use it from then on without too much apparent difficulty in maintaining a proper sequence of recordings.

That then was the way things stood until late in August.

Mrs. Harvey acknowledged having heard Mr. Carter's testimony upon the Inquiry wherein he said he had not heard of Kim's case as one of his responsibilities until after the weekend of August 31, 1975. He said he had not spoken with Mrs. Harvey about the case until September, 1975. She was asked to comment upon that testimony.

Her reply began as follows:

> "I don't know what happened to this and at this length of time I can't tell you what happened. I took it out to give it to Mr. Carter and I don't know whether I actually did it or not. I intended to give it to him, whether it got mixed up in the typing or what, I don't know, but I didn't run across it until August the 29th and I don't think I have ever been so upset at anything in the office as I was at that."

When asked what happened on August 29, 1975 she answered:

> "My memory of it is that I checked to see what was happening with this case that had been, that had come in in June and called Mr. Carter into my office and told him to get in touch with the police, I won't use my exact phrases and let me know immediately the state of the case insofar as the police were concerned."
> "I remember asking Mr., telling Mr. Carter to phone immediately and to report back immediately he had talked to the police."

When asked what Mr. Carter had reported to her she answered:

> "That he had talked with Detective Gander of the city police about making a home visit and was told the current situation with the police and parents was most volatile and we should hold off and that he would send in a parents' (sic) [occurrence] report and also keep the home under surveillance and report back, but we never received a report."

As I have noted in Chapter VI that whole series of responses is directly contradicted by Mr. Carter's testimony which is supported in part by Police Constable Gander's testimony.

Mr. Carter denied that he had any such conversations with Mrs. Harvey on August 29, 1975. He said he did have a brief and casual conversation with Police Constable Gander, but while it related to Kim it was not initiated by him and he did not then know that he was in any way connected with Kim's case. He said he had made a note of that conversation and passed it to the intake department for recording. He relied on the recording in the file to fix the date of the conversation as August 29, 1975. He acknowledged that the recording in the file was not an exact transcription of his notes.

Police Constable Gander had no recollection or record of having spoken with Mr. Carter on August 29, 1975, but specifically denied that he had spoken as Mrs. Harvey claimed was reported to her.

As I have said, I prefer the combined evidence of Mr. Carter and Police Constable Gander, notwithstanding the possible inconsistency as to their having spoken on August 29, 1975. Even if they did speak it was merely informally as Mr. Carter says and was not the result of Mrs. Harvey's having roused Mr. Carter to action as she suggests.

Having seen and heard Mrs. Harvey as she testified and having noted her dominating manner and her force of expression, I am sure that had she spoken to Mr. Carter as she says she did he would have remembered it and would not deny that it occurred.

Mrs. Harvey offered no explanation as to how she had "run across it," to use her expression, or why she decided on August 29, 1975 to check to see what was happening with the case. It had lain dormant from June 17, 1975. For more than ten weeks no one in the Society had done anything about it. There was no testimony to suggest that it in anyway was a subject of discussion amongst the Society's employees during that time. There was no testimony that anyone within or without the Society had spoken to Mrs. Harvey about Kim's case after June 17, 1975. There was no testimony that any document, however informal, relating to Kim's case had remained in Mrs. Harvey's office.

I am not prepared to accept Mrs. Harvey's testimony that for some unexplained and unremembered reason a case, which had been unattended for so long and which was not formally opened within the Society and to which no worker had been assigned, would suddenly come to her attention. I am aware that August 29, 1975 was the Friday preceding the Labour Day Holiday and it was during the period of staff vacations; so Mrs. Harvey would have been more burdened then she was ordinarily.

Mrs. Harvey offered no explanation as to why on August 29, 1975 she ordered Mr. Carter to contact the Sarnia Police Force. Mrs. Saul's oral report to Mrs. Harvey on June 17, 1975 and her notes given to Mrs. Harvey had indicated her view that the Lambton Health Unit should have some involvement in the case. Mrs. Saul did not orally or in writing suggest to Mrs. Harvey that the police should be involved. Until then the only connection which the Sarnia Police Force had with the case was to relay to the Society the contents of Dr. Jumean's telephone call of June 16, 1975 and then to accompany Mrs. Saul and Mrs. Hoad to see Kim. I see no reason for Mrs. Harvey on August 29, 1975 wanting Mr. Carter to call the police. There was no indication anywhere that the Sarnia Police Force would have any reason to have any information beyond what was given to the Society on June 17, 1975.

That lack of explanation for what seems to be an unusual instruction to Mr. Carter strengthens my belief that Mrs. Harvey's testimony relating to August 29, 1975 is not credible.

If the alleged incident of August 29, 1975 had occurred, and if Mrs. Harvey had been as disturbed as she said she had been, I would have expected it to have been more firmly placed in her memory than her testimony indicates. She would have recalled, even three years later, what brought about the spurt of activity and inquiry. Even her notes which she says she dictated on August 29, 1975 are devoid of any expression of her supposed consternation upon finding that nothing had been done with reference to the matter.

I have reproduced those notes at a later point in this Chapter and have expressed some comment thereon.

In the same vein I note Mrs. Harvey's own testimony that when the file was, at last, formally and properly opened on September 2, 1975, the date of its opening was recorded as being August 31, 1975 because

> "we wanted to get it in on the August statistics...statistics were very important...[for] money."

If that be so and if Mrs. Harvey had initiated some activity on August 29, 1975, and if she was as concerned about the case as she indicated she was, I can only wonder why she would not have opened a file on August 29, 1975. My wonderment reinforces my finding that nothing such as Mrs. Harvey described occurred on August 29, 1975.

I do not accept Mrs. Harvey's evidence as to what she says occurred on August 29, 1975.

However, even if Mrs. Harvey had remembered Kim's case and made some enquiry about it on August 29, 1975, it would not have made a great deal of difference unless she had taken some positive step to ascertain what the conditions were that day in the Popen home.

A report such as Mrs. Harvey says she received from Mr. Carter should have caused her a good deal of concern for the safety of a child in a "volatile" situation. Kim's protection was the responsibility of the Society by reason of The Child

Welfare Act and its own documents of incorporation. There is no provision for the Society to delegate or assign any of its responsibility to any other agency, institution, authority or person even though that other may be given certain powers and duties under The Child Welfare Act.

Thus, in my view, had Mrs. Harvey received a report of a volatile situation in the Popen home neither she nor the Society should have refrained from taking steps to ensure Kim's safety. She should have instructed Mr. Carter or some other worker to make further inquiries of the Sarnia Police Force and elsewhere and to conduct whatever investigation might have been required to ascertain whether Kim was a child in need of protection. That obligation on Mrs. Harvey and the Society is all the more apparent where, as here, there was some indication of prior abuse and a serious concern for Kim's welfare already expressed by members of the Society's personnel, including Mrs. Harvey.

If Mrs. Harvey had received such a report from Mr. Carter based on his conversation with Police Constable Gander there was at once an obligation upon her, as a supervisory officer of the Society having direct responsibility for the case, to ensure that the Society took immediate steps to fulfill its statutory and corporate duty to protect Kim. Mrs. Harvey did not meet that obligation. The Society did not fulfill its duty. Kim was injured.

I am not to be taken as suggesting that the Society should have proceeded in isolation from the Sarnia Police Force and in disregard of that Force's wishes. The concerns of the Society should have been discussed with the Force and then both should have jointly decided upon what was necessary to ensure Kim's protection. In any such discussion the Society position should have been that Kim's protection was its paramount concern and in no event would it permit her to be left or placed in any danger.

Mrs. Harvey sought, even in her testimony upon the Inquiry, to avoid or minimize criticism for her default in June, 1975. She sought to create the impression that she, without any incident external to or within the Society, had discovered the default and had set about to remedy it before Kim suffered her next group of injuries.

I have found her efforts to be futile. Even if she had succeeded she would have been exposed to just as severe criticism for her failure to act responsibly as an officer of the Society on August 29, 1975 when, on the basis of her testimony, she had received various reports and information. On her evidence she knew that Kim was reported to be living in a "volatile" situation involving her parents and the Sarnia Police Force. She knew that there were reports of prior injury and hospitalization which had not been investigated in any way by the Society. She knew that Mrs. Saul had expressed concern for the need of long-term involvement of the Society and that she herself had concurred in Mrs. Saul's preliminary assessment of that need.

If I had accepted Mrs. Harvey's testimony as to what occurred on August 29, 1975, I would have found her to have been in breach of her obligations and duties in that she failed to take any action to protect Kim or even to seek to learn whether or not Kim might be in need of protection. The breach of duty on August 29, 1975 would have been even more deserving of criticism than the breach of duty on and after June 17, 1975 because, on August 29, 1975, Mrs. Harvey would have had even more reason to be concerned for Kim's safety than she had on June 17, 1975.

Had Mrs. Harvey succeeded in her attempt to avoid criticism in one area it would have served only to attract criticism in other areas.

Having again learned of Kim's case after August 31, 1975, Mrs. Harvey was again involved as the Supervisor of the Family Services Department of the Society.

I have already set forth some of her testimony as to events she says occurred on August 29, 1975. I have rejected that testimony. I want now to consider another facet and enlargement of that testimony.

The file in the Family Services Department of the Society contains two typewritten paragraphs which immediately follow what purports to be the transcription of Mrs. Saul's notes of June 17, 1975. The two paragraphs with accompanying marginal notations are:

"June 19/75 This case was due for assignment to H.R.C. for service including Public Health nurses. There was serious concern that the mother might take off to Jamaica with the child in view of the way she had been observed handling her. There was apparently a misunderstanding about the opening of the case at that time.

H.R.C. had talked with Detective Gander, City Police, re a home visit and was told that the current situation with police and parents was most "volatile" and we should hold off. He would send an occurrence report and also keep the home under surveillance and report back. No report was received."

They are followed by a typewritten, not wholly accurate transcript of notes made by Mrs. Dick after her visit to St. Joseph's Hospital in the afternoon of Sunday, August 31, 1975. The marginal notation beside that transcript was typed "Aug. 29/75 Referral", but the figures "29" were stricken in ink and replaced in handwritten ink by the figures "31."

Mrs. Harvey continued her testimony to say that on August 29, 1975, she had dictated the two paragraphs beside the dates of June 19 and August 29, 1975. She said she had not dictated the longer item opposite the typewritten date of August 29, 1975 changed to August 31, 1975. She said the date of August 29, 1975 in the latter instance was because of a typist's error which came about because of the format of the Record of Inquiry. She had corrected that error and also an accompanying error which had changed the sequence of two pages of Mrs. Dick's notes.

Apart from that those paragraphs are incomplete, inaccurate and misleading. Anyone reading those paragraphs without the benefit of other testimony upon the Inquiry would be led to believe that the management of Kim's case be Mrs. Harvey and the Society was less woeful than it was.

Mrs. Harvey did not offer any explanation for her choice of June 19, 1975 as the date to be placed in the margin opposite the first paragraph she dictated.

All of the recording preceding it was opposite the date of June 17, 1975 and related to events which occurred on that date or were brought to the attention of the Society on June 17, 1975.

On reading that first paragraph without any other information about the matter, one might reasonably suppose that on June 19, 1975 in some way separate from the matters recorded under date of June 17, 1975, Mrs. Harvey had done or learned what is recorded in that paragraph. That supposition would be incorrect in several areas.

Firstly, nothing about the case occurred or was learned by the Society on June 19, 1975.

Secondly, the concern about Jennifer Popen taking Kim to Jamaica had been expressed by Mrs. Saul to Mrs. Harvey on June 17, 1975.

Thirdly, there was no "misunderstanding about the opening of the case at that time." Everyone involved in the case had the same understanding of the case. That understanding was that Mrs. Harvey on receiving Mrs. Saul's report and her notes and those of Mrs. Dick had assumed personal responsibility for performance of administrative procedures in connection with the case, had relieved Mrs. Dick and Mrs. Saul of any further or ongoing responsibility and had decided to assign the case to a long-term worker, possibly Mr. Carter. All of that occurred on June 17, 1975, not June 19, 1975.

Fourthly, the closing phrase "at that time" could lead one to believe that on June 19, 1975 the "misunderstanding" had been resolved. It had not. The case was in exactly the same position as when Mrs. Saul reported to Mrs. Harvey on June 17, 1975.

The incidence of omissions from and inaccuracies in the record continue in the second paragraph Mrs. Harve dictated.

I have already expressed my finding that the paragraph was dictated in September 1975 rather than on August 29, 1975.

I do not know if there is any significance in the fact that the marginal notation beside this second paragraph does not contain Mrs. Harvey's initials. There is no real consistency in the style of the records of the Society, but often, if not usually, the initials of the person dictating the item for a separate day are set out under the date.

The second paragraph could lead a reader who had no other information about the case into several possible errors.

Firstly, the expression "H.R.C. had talked with Detective Gander", especially when read in conjunction with the last sentence "no report was received" would indicate that that "talk" occurred prior to August 29, 1975 and long enough before August 29, 1975 to merit the critical comment that by August 29, 1975 no report had been received. Mrs. Harvey herself testified that Mr. Carter spoke with Police Constable Gander on August 29, 1975 after she had spoken to Mr. Carter.

Secondly, the first sentence would indicate that the "talk" was confined to a discussion about "a home visit." It does not indicate that Mrs. Harvey had spoken to Mr. Carter as she said she had and told him to learn for her "immediately the state of the case insofar as the police were concerned."

Thirdly, there is no indication that even until then the Society had failed to do anything.

On the testimony, and indeed even on the basis of common sense, I am satisfied that the Society maintained recordings such as were kept in both the Family Services Department and Children's Services Department files so that any worker later or otherwise involved in the management of the case might have a quite complete and accurate resume of what had occurred earlier or in connection with some other facet of the case and of what those involved earlier or otherwise had thought about the case.

The paragraphs dictated by Mrs. Harvey would not serve that purpose.

By reason of the administrative organization of the Society, the Family Services Department, as represented by Mrs. Harvey, as Supervisor, and by Mr. Carter, as social worker, retained prime responsibility for the management of Kim's case after Kim came into the care of the Children's Aid Society on August 31, 1975.

The Children's Services Department had responsibility for Kim's day-to-day care, including her placement in a foster home, but the Family Services Department had responsibility for the overall administration of the case. That included the provision of any services to Kim's parents and the preparation and presentation of the Society's application to the Provincial Court (Family Division) of the County of Lambton, which shall be hereafter in this Chapter called the "Court", for an order declaring Kim to be a child in need of protection and placing her in the care of the Society.

I am satisfied that promptly on September 2, 1975 the first regular operational day for the Children's Aid Society after Kim came into its care on August 31, 1975, Mrs. Harvey met with Mrs. Dick and received a complete report upon the events of August 31, 1975 and the information Mrs. Dick had received. I am satisfied that Mrs. Harvey then did whatever was necessary to ensure that a file was opened and that Mr. Carter was aware that he had been assigned responsibility for its management within the Family Services Department.

Even in recording that assignment of duty the written records of the Society are not entirely accurate. It is recorded simply "August 31, 1975 case opened to H.R. Carter." That would lead an uninformed reader to believe that Mr. Carter was assigned on August 31, 1975. He was not.

I understand the supposed reason for such a recording. I am satisfied there was no evil motive in recording the assignment in that manner. But it simply is carelessly and inaccurately stated.

As Supervisor of the Family Services Department, Mrs. Harvey maintained contact with Mr. Carter and was aware generally of what he did in performance of his duties. She had the responsibility to ensure that he properly and sufficiently performed those duties.

There is no recording within the files of the Society to indicate Mr. Carter's activities and opinions with reference to Kim's case apart from a quite lengthy item with a marginal notation of "September 1/75 - February 29/76" which Mr. Carter testified he dictated after Mrs. Harvey relieved him of responsibility for the case on February 23, 1976.

Thus for a period of about six months, from September 2, 1975 until February 23, 1976, Mr. Carter purported to perform his duties, but there was no written record of what he did, what he saw, what he heard or what he thought. There was no record that he was encountering any difficulty, that the case was in any way unusual or presented any special problem or that he had formed any opinion with reference to the case or its management and conclusion.

Bearing in mind the purpose of maintenance of written records and on the testimony upon the Inquiry, I am satisfied that it is not satisfactory for a case which was as serious as Kim's and which presented so many problems and difficulties as were mentioned upon the Inquiry to be devoid of written record for that period of time.

Mrs. Harvey's position required her to ensure that proper records of Kim's case were maintained. Such records would include Mr. Carter's notes. She failed to fulfill that duty.

I have mentioned Mrs. Harvey's failure in June 1975 to comply with the requirements of section 14 of Regulation 86, Revised Regulations of Ontario, 1970. In the circumstances that existed in June, 1975 that default was entirely hers. From August 31, 1975 there was a similar default for which Mr. Carter bore initial responsibility, but for which Mrs. Harvey was responsible for reason of her position as Mr. Carter's supervisor.

The receipt of the complaint on August 31, 1975 would appear to have been recorded in compliance with Section 14 of that Regulation 86. The transcription of Mrs. Dick's notes report the events at the hospital on that day constitute such a recording.

The other requirements of Section 14 of that Regulation 86 were not met. Mr. Carter did not, within twenty-one days of August 31, 1975, record any information as this investigation of the complaint. Nor did he record in that time a report determining that Kim was not in need of protection. Mrs. Harvey, as Mr. Carter's supervisor, should have ensured that those recordings were made.

The Society had determined early in September, 1975, if not on August 31, 1975 when Annals Popen and Jennifer Popen signed the form of non-ward agreement, that Kim was a child in need of protection. The validity of that determination was confirmed by order of Judge Nighswander on February 25, 1976.

Having made that determination in September, 1975, the Society was obliged to prepare and record a tentative plan for Kim's welfare and the steps taken to implement that plan. That recording should have been made within twenty-one days of August 31, 1975, it was not.

That too was initially Mr. Carter's responsibility, but Mrs. Harvey, as his supervisor, should have ensured that the appropriate plan was formulated and recorded.

Upon all of the testimony, the failure in this area is not one merely of lack of recording. There was no evidence that from August 31, 1975 to February 25, 1976 Mr. Carter or anyone else in the Society formulated any plan for Kim's welfare.

The only indication of any plan for Kim's welfare was Mrs. Harvey's testimony to the effect that she had decided that Kim would be returned to her parents. Such a basic and unadorned decision does not constitute a plan, but even that is not recorded in the files of the Society.

When Mr. Carter finally did record some information after being relieved of the case late in February, 1976, he wrote of "worker/client case relationships, case goals, etc." being "legally restricted" by Mr. Higgins. That acknowledges that no plan for Kim's welfare was formulated.

In the failure to prepare and record a plan for Kim's welfare, Mr. Carter, and thus Mrs. Harvey, were in breach of Section 15 of Regulation 86, Revised Regulations of Ontario, 1970, as well as in breach of Section 14 thereof.

Section 14 of that Regulation required that a tentative plan be prepared and recorded. Section 15 of that Regulation required the Society, within sixty days of Kim's admission to its care, to prepare and record a plan for her "care, treatment and progress." Thus by October 30, 1975 the Society, represented by Mr. Carter and by Mrs. Harvey as his supervisor, were obliged to have prepared and recorded that plan. That was not done.

Section 15 of that Regulation required every such plan to be reviewed and, if necessary, amended every three months thereafter. That should have occurred by January 30, 1976. There was no plan to be reviewed in January 1976; so there was no review.

That failure by Mr. Carter, and thus by Mrs. Harvey, to ensure the preparation, recording and review of tentative and definite plans at best supports the opinion expressed by the members of the Farina Committee that the staff of the Society were not knowledgeable about The Child Welfare Act.

Mrs. Harvey either was not aware of the provisions of Sections 14 and 15 of that Regulation 86, or she chose not to enforce or comply with them.

Mrs. Harvey was aware that Mr. Carter was preparing the application to be presented to the Court by the Society under The Child Welfare Act. It sought an Order declaring Kim to be a child in need of protection and placing her in the care of the Society.

Mrs. Harvey's duties included representation of the Society in the Court. She was to present the application prepared by Mr. Carter.

I am satisfied that the application was prepared in sufficient time to enable its initial presentation in Court on September 8, 1975. Mrs. Harvey testified that the hearing of the application was adjourned to October 29, 1975 because:

> "A. Well, on September the 8th, we wouldn't have had enough time to get all the material together, all the witnesses subpoenaed, all the work that has to go in in the preparation of a case...but we had to get that case in Court."

Mrs. Harvey did not elaborate upon her statement that "we had to get that case in court." Doctor Turner testified that speedy application to Court is desirable even where a child is in the care of a children's aid society pursuant to the agreement of the child's parents. He testified long after Mrs. Harvey. In her testimony Mrs. Harvey did not give any reason to support her statement. She made no mention of any principle of practice or theory of social work which would require the Society "to get that case in court."

While Mrs. Harvey achieved her stated goal of getting the "case in court" quickly, it was really a useless gesture. The Society's application was inititally presented in Court before Judge Nighswander on September 8, 1975. That was a formality. For a variety of reasons, the application was not substantially presented until February 25, 1976.

The delay of virtually six months arose, in large part because of the failure of Mr. Carter and of Mrs. Harvey, in her dual position as Mr. Carter's supervisor, and as the Society's representative in Court, to ensure that all necessary witnesses were present to testify.

The merely formal or token presentation of the Society's application to Court on September 8, 1975 does not meet the real substance of Dr. Turner's view that a speedy application to Court is desirable. He meant a speedy application and then a speedy resolution of any points at issue so that all parties would know their respective position.

Mrs. Harvey testified that she was aware that, because Jennifer Popen and Annals Popen had signed a non-ward agreement placing Kim in the care of the Society for one month from August 31, 1975, the provisions of The Child Welfare Act requiring the presentation of such an application to Court within five days of Kim's detention in a place of safety would not be applicable. She testified:

> "I didn't want any slip-ups and I went as fast as I could."

She said her first priority was to get Kim in the care of the Society and then to keep her there.

Those priorities were laudable. So too was the desire to proceed as quickly as possible.

Mrs. Harvey testified that she appreciated that investigation of the circumstances of the case and what she chose to call "groundwork" were as important as getting the case to court. I understood her expression "groundwork" to mean the provision of basic and initial service by the Society to Kim and her family.

In any event, on September 8, 1975, Mr. Lovatt and Mr. Carter advised His Honour Judge Nighswander that the Society would require a month to prepare for the hearing and that three doctors would be involved.

Mrs. Harvey relied upon Mr. Carter to prepare the application, but she retained responsibility for presenting it in Court.

Mrs. Harvey's testimony was that in June 1975, she had intended to assign the case to Mr. Carter and to instruct him to provide case work "on an intensive basis." It is reasonable to infer that in September, 1975 her intention would be that Mr. Carter provide case work on a basis at least as "intensive" as she had intended in June, 1975.

No criticism of the Society or any of its personnel should be expressed with reference to the adjournment of the matter on September 8, 1975. Neither the Society nor Mr. Higgins on behalf of Jennifer Popen and Annals Popen had had time to prepare for the hearing. Both parties wanted an adjournment. Mr. Lovatt suggested a month's adjournment. The earliest time at which Judge Nighswander could hear the application was October 29, 1975. The Society then was seeking an order committing Kim to its care for six months.

From the outset in September, 1975, Mr. Carter and members of the Sarnia Police Force had difficulties interviewing Annals Popen and Jennifer Popen. One of Mr. Carter's responsibilities as a worker in the Family Services Department was to obtain information to enable him to prepare social histories of them and to furnish copies thereof to the Children's Services Department.

Mr. Carter testified that in September, 1975, he understood that a member of the Sarnia Police Force intended to charge Annals Popen and Jennifer Popen with an offence under the Criminal Code. He later learned the charge related to an offence under The Child Welfare Act.

He testified that from September 3, 1975 until February 21, 1976 he did not carry out case work as he might normally have done. He was hampered because of the two separate proceedings, the Society's application and the prosecution of Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act. He felt each was awaiting determination of the other. He substantially confined himself to being present when Kim was visited by her parents at the Society's offices.

Mr. Carter did speak with Annals Popen and Jennifer Popen, but only to the extent "permitted" by their solicitor, Mr. Higgins. Mr. Carter felt that was satisfactory while awaiting the outcome of their trial upon the charge under The Child Welfare Act. He did visit the Popen home on two occasions, once in January and once in February, 1976, shortly prior to dates set for hearing so that he could assess the conditions in the home. Each visit was with Mr. Higgins' express permission and, on the latter occasion, Mr. Higgins gave permission with the instruction to Mr. Carter that he not "quiz them."

Mr. Carter felt he was "legally restricted" and unable to follow routine or normal case work practices. He felt that Jennifer Popen was "hostile to answer questions." From September 24, 1975, she would not talk with him. She said that was on Mr. Higgins' advice.

Mrs. Harvey, responsible for supervision of Mr. Carter's performance of his duties and responsible for presentation of the Society application in Court, knew of the limitation upon the scope of his work which Mr. Carter accepted.

She should have been apprising herself of the state of preparation for the Court hearing. After September 8, 1975, the hearing was scheduled to be heard on October 29, 1975, then January 19, 1976 and then February 23, 1976. In that regard she must surely have asked Mr. Carter as to the progress of what he described as "routine or normal case work practices." If she did not she should have for without that information she could hardly feel that she was adequately prepared and able to present the application properly.

Her own testimony was that she had followed the case "fairly well" while Mr. Carter was responsible for it. An indication by what she meant by "fairly well" is contained in the following extract from her testimony upon the Inquiry:

> "Q. Were you made aware by Mr. Carter of the problems that he had run with regard to seeing these parents?
>
> A. Yes.
>
> Q. Before the wardship hearing.
>
> A. To some extent, yes.
>
> Q. To what extent?
>
> A. Oh, my door was always open unless I had an interview going on or something. People would come by and sit down for a few minutes and discuss things or stand in the door and say 'this is driving me nuts, what am I going to do?' and maybe we'd sit down

and talk about it. Now, I don't know how much detail Mr. Carter and I went into; he was always on the run. He was so busy that I would expect that our discussion of it was pretty limited.

Q. At any rate can I take it that you didn't discuss the problems that you were having in approaching the parents - that Mr. Carter was having in approaching the parents, with Mr. Lovatt?

A. No, I don't think so.

Q. Did you wonder how that problem might be resolved?

A. Yes, I surely did.

Q. And what conclusion did you reach?

A. That basically Mr. Higgins was a very reasonable man and that we could reach him and get him to agree to let us work with the family."

Mrs. Harvey did not give Mr. Carter any advice or instruction in his efforts to carry out "routine or normal case work practices" or to overcome Mr. Higgins' "instructions" requiring Mr. Carter to have no contact with Annals Popen and Jennifer Popen. Those "instructions" were withdrawn only when it suited Mr. Higgins' purposes and to complete the arrangement he had suggested to Mr. Lang.

Mrs. Harvey was fudging her response. I am unable to determine the extent of her discussions with Mr. Carter. I infer that there was no adequate conference within the Society in preparation for the hearing at any time. I am prepared to accept that there may have been some fleeting comment as Mr. Carter was "on the run," but there was no properly organized and structured meeting to discuss what witnesses might be called, what their testimony might be or how far that testimony might go towards satisfying Judge Nighswander that the Society's application should be granted.

A fortiori, I am satisfied that Mrs. Harvey gave Mr. Carter no advice or instruction in that regard. I am reinforced in that conclusion by Mr. Carter's testimony that on February 25, 1976 he was surprised to hear Mrs. Harvey request Judge Nighswander to grant only two months' wardship. The pre-hearing discussions between Mrs. Harvey and Mr. Carter were so scant that Mr. Carter was not aware of the basic submission Mrs. Harvey proposed to make.

Having read the transcript of the proceedings in Court on October 29, 1975, I am satisfied that the Society, as represented by Mrs. Harvey and Mr. Carter, was willing to proceed. Witnesses were present. I infer therefore that both Mrs. Harvey and Mr. Carter felt the evidence then available would be sufficient to persuade Judge Nighswander to grant the application. They did not vigorously oppose Mr. Higgin's request for a further adjournment.

Thus on October 29, 1975, if not considerably earlier, Mrs. Harvey knew or should have known of the limited investigation and other work that Mr. Carter had done.

The same comment applies even more forcefully to the appearance in Court on January 19, 1976.

There was no evidence to suggest that Mrs. Harvey instructed Mr. Carter that he was or might have been in error or that he was or might have been failing to perform his duties in the various ways which became apparent as he testified upon the Inquiry.

Mr. Carter gave unquestioning acceptance of the restrictions imposed by Mr. Higgins upon Mr. Carter's contact and discussion with Annals Popen and Jennifer Popen particularly from September 24, 1975 and again in January, 1976.

Mr. Carter's attitude was such that when he was asked the following questions in cross-examination upon the Inquiry he gave the following answers:

> "Q. Isn't it fair to characterize your position as this, that as soon as you

learned that a lawyer who is known to be rather vigorous in their (sic) representation of his clients was involved in the case, you automatically adopted this courteous position that you've described of not creating a further disturbance with the law firm? Isn't that about it?

A. Correct.

Q. If we were to go back to your sentiments in the fall of 1975, I'm sure they would be that if you were to specifically try to interview the Popens about what exactly had happened you'd get into quite a furor with the law firm? That would have been your sentiments at that time, wouldn't it?

A. Yes.

Q. Yes, due to past experience?

A. Quite.

Q. Yes. And you're not an investigating law officer yourself whose mission is to establish guilt or innocence of persons of criminal charges. So, would it be fair to say that you would feel that was the responsibility of the police in any event to interview the alleged suspects and get confessions from them?

A. I took that to be their role."

It is not clear from Mr. Carter's evidence that he knew the legal niceties of the situation. He may very well have known that Mr. Higgins could not prevent him from asking questions, but in any event he chose not to ask any questions of Annals Popen and Jennifer Popen. He said that was because he was trying to establish a "rapport" with them.

Mrs. Harvey in her testimony acknowledged she made no effort to overcome the difficulty Mr. Carter encountered in trying to interview Annals Popen and Jennifer Popen even though she felt that the Society "really needed to work with this family."

In her testimony when asked if she had any complaint concerning Mr. Carter's work on Kim's case she replied:

> "A. I wished he could have seen the Popens more frequently...
> Not really a complaint but I wish that there had been more contact."

Mr. Carter did not follow routine or normal case work practices nor did Mrs. Harvey.

Mrs. Harvey in her testimony upon the Inquiry, when asked why, on February 25, 1976, she had formally sought an order placing Kim in the care of the Society for only two months rather than six months as previously mentioned engaged in the following exchange with counsel:

> "Q. Did you feel it would be easier to convince Judge Nighswander you should get two months, rather than six months, is that a summary of your reasons for agreeing to a two month wardship?
>
> A. No, I thought that it, that perhaps Mr. Higgins and Mr. Harvey wouldn't fight so hard for, to give us two months as they would for six and I wanted to get that wardship.
>
> Q. Were they fighting hard?
>
> A. Yes.
>
> Q. Now, it hadn't been any fight up to this time, it had just been a series of adjournments...
>
> A. Well, for one thing, you have had testimony from Mr. Carter that he was experiencing difficulty in interviewing the Popens. We were not able to get in there and do the work that we were supposed to be doing.
>
> Q. Investigation of the Popen house?

A. Yes, and working with the parents and finding out more about them, which is what one does."

Mr. Carter believed, perhaps until February 9, 1976, that the charge against Annals Popen and Jennifer Popen was under the Criminal Code, not The Child Welfare Act. Thus he could not have been maintaining adequate liaison with the Sarnia Police Force.

He had no information as to the results of any investigation conducted by the Sarnia Police Force. He had no information as to any interview or communication by the Sarnia Police Force. Any information which the police investigation might have obtained should have been known to the Society. It might have been supportive of the Society's application and of assistance generally in the management of Kim's case. Mr. Carter had not even asked any police officer to advise him of the results of the police investigation.

He was not putting into the file an ongoing record of occurrences and information relevant to the case. Mrs. Harvey was aware that this was his usual procedure. She mentioned that as one of the reasons she was not concerned by the lack of recording immediately after June 17, 1975.

He did not secure the attendance of all necessary witnesses for the hearing of the Society's application on January 19, 1976. That resulted in an adjournment and delay which would not otherwise have been necessary.

Mrs. Harvey knew or should have known of all of these deficiencies in Mr. Carter's performance of his duties. She did nothing to correct them or everything that could and did flow from them.

Mrs. Harvey did not adequately perform her duties as Supervisor from September 2, 1975 until February 26, 1976. She did not instruct Mr. Carter as to the proper performance of his duties and she did not ensure that he followed her instructions.

As a result of those failures of performance by Mr. Carter, for which Mrs. Harvey as

Supervisor is responsible, and as a result of her own failure, in her role as Supervisor, including presentation of the application to Court, there was unnecessary delay in the Court and the presentation of the application was not complete.

Much was made from time to time during the Inquiry that Mrs. Harvey and other employees of the Society did not have ready access to the advice of a solicitor. It was suggested that their task was thus more difficult and they were at a disadvantage if counsel were retained to oppose them.

The absence of such convenience of legal advice was not truly a factor in Kim's case. On January 6, 1976, the Board of Directors of the Society acceded to a request from Mr. Lovatt and Mrs. Harvey which they said was based on the incidence of child abuse, that funds be made available to enable a solicitor to be retained in any proceeding if Mr. Lovatt felt it necessary or advisable.

Mrs. Harvey testified that from time to time she had spoken to Mr. Lovatt about the desirability of retaining a solicitor in various matters. She said she had understood from him that the Ministry of Community and Social Services had not approved an item for legal services contained in the 1975 budget submitted by the Society. She said she would have appreciated the assistance of a solicitor upon Kim's case, but she could not remember if she expressed that specific desire to Mr. Lovatt. She said it was a difficult case, but, in a sense of hopelessness in getting legal assistance she persevered alone.

At another point she repeated her uncertainty as to having spoken to Mr. Lovatt to seek permission to retain a solicitor, but the emphasis was changed somewhat to show that she thought she had spoken to him, but had told him she could manage.

She acknowledged that on at least two earlier occasions the Society had retained solicitors in connection with difficult cases.

I am satisfied that the Society would have retained a solicitor to assist Mrs. Harvey with Kim's case if she had asked for such assistance. That would have been so in 1975. It would have been so in 1976 after the action of the Board of Directors of the Society on January 6, 1976 to provide funds for legal services if required by Mr. Lovatt.

Mrs. Harvey did not ask Mr. Lovatt to retain a solicitor to assist her with Kim's case.

Mrs. Harvey took some satisfaction in saying that, although it was a serious and difficult case with "road blocks...thrown up" by Mr. Higgins, "The only comment I have to make is that I did win."

She meant by that comment to imply that she successfully presented the Society's application. Her smug satisfaction is not merited when one examines the history and facts of the case as shown upon the Inquiry.

If the mere granting of the application by Judge Nighswander constituted winning, then Mrs. Harvey and the Society did win.

But the winning came months later than it should have. The testimony of the skilled and experienced social workers who testified upon the Inquiry was that expeditious completion of proceedings such as were taken by the Society is important. The child whose life is to be affected by the result is entitled to that. Here by reason of Mrs. Harvey's failure to ensure that Mr. Carter properly performed his duties the completion of the matter was unnecessarily delayed by more than five weeks from January 19 to February 25, 1976.

Mrs. Harvey shares some responsibility for the earlier delay from October 29, 1975 to January 19, 1976. That came about at Mr. Higgins' request. He based his request on the charge laid by the Sarnia Police Forçe under The Child Welfare Act which, by error, was at that time on the list of cases for trial in the Provincial Court (Criminal Division) of the County of Lambton rather than the Court.

Mrs. Harvey did not oppose his request. She did not draw to the attention of Judge Nighswander or Mr. Higgins that such a charge could be heard only by a provincial judge sitting in provincial court (family division). Had Mrs. Harvey mentioned that provision in The Child Welfare Act it may not have been necessary for Judge Nighswander to adjourn the matter for such a lengthy time to await the outcome of the trial in Provincial Court (Criminal Division) which, from Mr. Higgins' submissions in support of his request for an adjournment, could reasonably be expected to be completed in December.

Perhaps Mrs. Harvey was not aware of that provision of The Child Welfare Act, but she should have been. A qualified social worker, particularly one in a supervisory position, should be aware, at least in a general sense, of the provisions of The Child Welfare Act relating to the court in which various matters are to be heard. That is all the more so in Mrs. Harvey's case for she was responsible for representation of the Society in Court upon various matters under that statute.

The same sort of comment applies to Mrs. Harvey's failure to mention the provisions of section 40 (3) of The Child Welfare Act empowering the judge conducting a trial of a charge alleging an offence under section 40(1) or section 40(2) under that Act to hold a hearing and proceed as if the child involved in the charge had been brought before the Court as a child apparently in need of protection.

My criticism of Mrs. Harvey in this area may appear to be harsh. Others were initially unaware of the particular statutory provision as to the jurisdiction of the Court. But Mrs. Harvey was the Society's representative in court matters. It was she who, at about that same time in the fall of 1975, told Mrs. Farina that the Society could gain nothing from attending a seminar for court workers sponsored by the Ontario Association of Children's Aid Societies.

I am aware that even before Mr. Higgins mentioned that the trial in Provincial Court (Criminal Division) might be held in December 1975, Judge Nighswander had mentioned January 19, 1976 as an open date for him in Provincial Court (Family Division). At the same time he said "It's a terribly long time." So I am inclined to believe that had he been reminded of the statutory provisions he might have been able to arrange an earlier date for a trial and hearing of the two matters, separately or as one matter.

While Mrs. Harvey was prepared to persevere without any advice or assistance from a solicitor, it is reasonable to suppose that a solicitor preparing for a trial or hearing would have been aware of the statutory provisions and would have brought them to Judge Nighswander's attention.

Kim's interests were not well served by the Society and Mrs. Harvey in the preparation and presentation of the Society's application.

The evidence presented by Mrs. Harvey upon the hearing was incomplete. In brief testimony Police Constable Wyville said that he had seen Kim in hospital on August 31, 1975 and had noticed she had bruises on her arms, ankle and cheek and a cut lip. He had then turned the matter over to Mrs. Dick. Only in cross-examination and in response to questions by Judge Nighswander did Police Constable Wyville mention that Jennifer Popen had given different stories as to how the injuries were caused.

On consent, the statement of facts read in upon Annals Popen's plea to the charge under section 40 of The Child Welfare Act on February 23, 1976, was accepted as part of the evidence.

Two photographs of Kim in hospital taken by a police officer on August 31, 1975 were introduced to illustrate her injuries.

The Director of Medical Records of the hospital testified as to Kim's admissions to hospital from March 22 to April 3, 1975 for a fracture of the left humerus, as an outpatient on April 12, 1975 for upper respiratory infection, from April 28 to May 2, 1975 for bronchiolitis and from August 31 to September 5, 1975 for "battered child syndrome, multiple bruises, fractured humerus."

Dr. Singh testified as to his examination of Kim on March 25, 1975. He said the explanation for the injury did not satisfy him that such an injury could be caused in the way stated, that is, that the arm was broken while Jennifer Popen was changing Kim's clothes. He had requested a full investigation of the background of the parents.

Upon cross-examination Dr. Singh testified as to having seen Kim on August 31, 1975. Jennifer Popen had told him that Kim fell from her crib while climbing out. That would be an unusual feat for a child of Kim's age. She could not have climbed out. The bruises on Kim's ankle were unusual "except if you grab tight or squeeze it." If the side of the crib was down she could have fallen out, but then he would have expected an injury to her head and there was none.

In response to Judge Nighswander he said the injuries were "recent" and appeared to have occurred within three to five days prior to August 31, 1975.

Mrs. Hewitt testified as to Kim's admissions to hospital on March 22, April 28 and August 31, 1975. She had been involved in Kim's case on all three occasions. She saw nothing extraordinary in the way Jennifer Popen handled Kim on the first two occasions. She had not seen Jennifer Popen handle Kim on the third admission and Kim was well nourished. Her injuries on August 31, 1975 did not appear to have been caused by falls. Jennifer Popen had said Kim fell from the crib on August 30 and again on August 31, 1975. The bruising of the elbow appeared to be caused by the pressure of a hand, fingers and thumb.

Mrs. Dick testified as to the non-ward agreement signed by Annals Popen and Jennifer Popen on August 31, 1975. She had been called to the hospital because Jennifer Popen had wanted to remove Kim from hospital against the advice and wishes of medical personnel.

Mrs. Kirby testified as to the Society's care of Kim following her release from hospital on September 5, 1975. She described Kim's actions and reactions to attention. Kim rejected it and had restless nights. On the first visit of Kim with her parents Mrs. Hewitt restrained Jennifer Popen from grabbing or holding Kim by her injured elbow. Jennifer Popen and Annals Popen visited Kim regularly. The visits went well. Each visit was only one-half hour.

That was the extent of the testimony given by witnesses called by Mrs. Harvey. What I regard as some of the most helpful testimony was elicited in cross-examination or by questions put by Judge Nighswander. Mrs. Harvey did not present the case well. She was not prepared.

No witness was called on behalf of Annals Popen and Jennifer Popen. Judge Nighswander of his own volition called Jennifer Popen. He obtained from her some responses as to her age, schooling, residence, religion and marriage and as to Kim and her injuries. He asked her how Kim's arm was broken on March 22, 1975. It was here that she gave the confusing series of answers I have already mentioned. Those responses, with some intervening questions were as follows:

> "Q. Yes. How did her arm get broken on the 22nd of March when the child was admitted?
>
> A. Well, that was an accident when she had the broken arm the first time.
>
> Q. How did that accident happen?
>
> A. Well, I had the crib down and I had her little sitter, and she was very sick.
>
> Q. I don't want to mix you up. I'm thinking now of the first time. The baby is only two months old the first time.
>
> A. Yeah, she fall that time.
>
> Q. Where did she fall from?
>
> A. Had her out of her crib in her little sitter.
>
> Q. She was in her sitter in the crib?
>
> A. Yeah. I had her in a sitter.
>
> Q. And she fell out onto the floor?
>
> A. Yeah,"

Judge Nighswander then generally described the testimony of other witnesses as to the nature and location of the bruises. After that description questions by Judge Nighswander and answers by Jennifer Popen recorded in the transcript of those proceedings as follows:

> "Q. And the second time--the 31st of August --how did those injuries take place?...Did you see those happen?
>
> A. No.
>
> Q. How did you discover them? (sic)
>
> A. A day before I took her to the hospital.
>
> Q. So that would be on the 30...31st of August?
>
> A. Yeah, and I took her on the 31st.
>
> Q. But how did you find them?
>
> A. I saw them on her and when I am dressing her she cries, her arm, so I bring her straight...
>
> Q. Did you find out how those bruises got there?
>
> A. Yeah.
>
> Q. How did they get there?
>
> A. Well, some of them were, like, my husband was drinking, and...
>
> Q. Is this what he told you?
>
> A. Well, no.
>
> Q. Or did you see?
>
> A. Well, no, yes.
>
> Q. Did you see him doing something that caused the bruises?

A. Yes, some of them.

Q. What was he doing?

A. He was drinking and he was holding the baby, yeah, and he was holding her and hurt her.

Q. Were you aware he was hurting her when he held her?

A. No.

Q. Didn't the baby make any...

A. No.

. . . . .

Q. How about the break in the arm the 31st of August?

A. Well, on the 31st of August I was washing clothes and I pulled the crib up, but it wasn't locked, you know. The part of the crib didn't stay up very well, so I was going to tie it up, and she was standing up like I said to the cop. She stand up and my cousin was there. I didn't see when she fall, but I find her underneath the crib.

Q. Then what did you do?

A. That's when I watched her for a little while and took her to the hospital.

Q. When was it that you saw your husband grabbing her?

A. On the 30...

Q. The same day or the day before?

A. No, the day before.

Q. And how about the knees? How did those bruises happen?

A. I never seen them.

Q. You don't know how it happened?

A. No, not the bruises on the knees."

Mrs. Harvey did not cross-examine Jennifer Popen nor did she make any submissions in support of the application.

In view of the nature of Jennifer Popen's responses to questions put by Judge Nighswander, particularly in the light of Mrs. Harvey's own often expressed opinion or suspicion that Jennifer Popen, not Annals Popen, was responsible for Kim's injuries, it is incredible that Mrs. Harvey did not cross-examine Jennifer Popen. Jennifer Popen was trying to excuse herself from any responsibility for any injury to Kim and to place on Annals Popen responsibility for any injury which Jennifer Popen had not sought to explain away as having been caused by accident.

Mrs. Harvey made no effort to apprise Judge Nighswander of the opinion or suspicion of herself and others as to Jennifer Popen's involvement with the injuries to Kim.

Nor did she make any effort to inform Judge Nighswander of other relevant material which was available from the Society's files. Included therein was a ten page transcript of a conversation between Jennifer Popen and Dr. Singh with a nurse, Mrs. K. Mitchell, present and participating. It related to the injuries discovered on August 31, 1975 and showed Jennifer Popen to have said:

> "I didn't tell you this part, she did fall out of the crib...meanwhile his [Annals Popen's] temper broke and he picked up a shoe, I had the baby [Kim] in my hands, he couldn't even see what he was doing, he was so drunk and he threw the shoes...I couldn't catch the shoe and it hit the baby and then he threw the other one and hit her again. So I want to tell you guys this part I didn't told you but she did fall and hit her hand same hand she hit before."

It also contained some comment on Kim's injury in March, 1975 which did not appear to be consistent with her replies to Judge Nighswander on February 25, 1976.

Then too it contained her statement that on August 31, 1975 at the hospital she had not wanted to remove Kim from hospital, but "just want[ed] to scare them [the nurses]." In it she referred to her niece beating Kim's legs with a heavy comb and she spoke of relatives in Sarnia saying "they hate kids and they beat them up all of the time." None of that was explored before Judge Nighswander.

Mrs. Harvey did not advise Judge Nighswander that X-rays taken in September, 1975 revealed rib fractures which had occurred a month earlier.

Jennifer Popen's testimony stood unchallenged. Dr. Singh's testimony upon examination in chief by Mrs. Harvey is recorded on less than one page of transcript. His cross-examination and responses to Judge Nighswander are recorded on about two pages and his re-examination by Mrs. Harvey is on about one-quarter of a page. The lines in those pages are single-spaced.

Upon the Inquiry, Dr. Singh's testimony is recorded on about fifty pages, double-spaced. His examination in chief is comprised of almost twenty-four pages. He was cross-examined by only one counsel. That comprised almost twenty-six pages. The examination-in-chief and the cross-examination were thorough, but were not in any way inflated or repetitive.

I appreciate that a comparison of examinations of witnesses based solely on the length is not really valid. But the examinations upon the hearing were not short because they were well organized and to the point and complete. They were not. The examinations upon the Inquiry were not unduly long. There were complete and directed well to the points of interest.

In examination in chief upon the Inquiry, Dr. Singh gave a complete review of his examination of Kim in March, 1975 and in August, 1975 and the various documents on which were recorded his findings, observations and other particulars of information given by Jennifer Popen upon those occasions and particularly the stories as to the ways in which Kim had been injured and which he said were not compatible with the injuries. He set forth his own suspicion of the presence of the battered child syndrome in March, 1975 and his concern then for Kim's safety and his desire that investigation be undertaken by the hospital social worker, Mr. Khattab. He mentioned the discovery, by X-ray in September, 1975, that Kim had suffered fractured ribs about one month earlier. He described the force he felt would have been required to cause each injury. He used terms such as "severe force," "strong violence or strong force", and "falling from a great height - more than three to four feet." The bruises on the ankles could be caused "by grasping tightly... a tremendous amount of pressure on the ankles."

Upon the Inquiry, Dr. Singh testified that he recorded the conversation he had with Jennifer Popen in September, 1975. He produced a transcript of it. He recorded the conversation because Jennifer Popen had earlier changed her explanation for previous injury and he wanted to establish a consistency in the pattern. He said that in cases of child abuse there is a great deal of inconsistency. He said that in March, 1975 he suspected that Kim had been abused; in September, 1975 "we were pretty sure it was child abuse: there was no question in our mind and we just wanted documentation." He had sent a copy of his report to the Society.

Upon the Inquiry, Dr. Singh said that in September, 1975 Kim suffered from slight iron deficiency anemia. He said this was probably because she received milk without solid food. That was in the pattern of cases of neglect or abuse of children. It indicated that the mother simply gave the child the bottle rather than spending more time and effort to give solid food.

I have set out this comparison of the testimony given before Judge Nighswander and that given upon the Inquiry to demonstrate how much more evidence could have been presented before Judge Nighswander. The two proceedings were so different as almost to defy comparison. One might more properly speak of contrast rather than comparison.

Mrs. Harvey did not present a full and complete case to Judge Nighswander. She was content to present enough evidence to persuade the learned Judge to grant the application. Judge Nighswander was prescient when he declined Mrs. Harvey's submission, concurred in by counsel for Jennifer Popen and Annals Popen, that the Society be granted custody of Kim for only two months. He decided that it was an inappropriate submission, saying:

> "I am not satisfied that this is a sufficient length of time to be sure that proper steps have been taken to make this home safe for the child."

Mrs. Harvey should have had a corresponding concern for Kim's safety. Upon the Inquiry she testified that the request for wardship for a period of only two months was a tactic to overcome the resistance of Annals Popen, Jennifer Popen and Mr. Higgins, but yet she denied any prior discussion along that line with Mr. Higgins or his office.

The comparison of the testimony before Judge Nighswander with that upon the Inquiry reinforced my belief that Judge Nighswander was misled by the paucity of evidence given to him. His reason for judgement disclose that he was led to regard Jennifer Popen as a loving and caring wife and mother struggling to hold her family together despite the brutal drunken behaviour of Annals Popen.

Mrs. Harvey was responsible for that and she did nothing to prevent it from happening.

Apart from the above failures by Mrs. Harvey to fulfill her obligations there were two incidents in February, 1976 which merit comment. They illustrate how Mrs. Harvey managed Kim's case and her general attitude towards others who might suggest to her that her decisions, made without prior consultation with others, might be in error.

On February 19, 1976, Police Constable Wyville and Police Constable Charlton of the Sarnia Police Force visited the Society's offices. Police

Constable Wyville did not state the purpose of the visit. He was uncertain as to its date. At one point in his testimony he felt it was only shortly before Kim's return to her family home on May 27, 1976, but later acknowledged it might have been February 19, 1976. On the testimony of others I am satisfied that it was on February 19, 1976.

On February 19, 1976, Police Constable Wyville and Police Constable Charlton spoke with Mr. Carter and Mrs. Kirby. Mr. Carter informed the police officers that Kim might be returned to her parents. As a result of their mutual concern over that prospect Mrs. Kirby, Mr. Carter and the police officers went to Mrs. Harvey's office to discuss the matter with her.

All four of her visitors expressed in no uncertain terms the concern they felt. Police Constable Wyville testified that he told Mrs. Harvey "If you give the baby [Kim] back it will be in the grave within three months."

The four who visited her office recalled in some way Police Constable Wyville's comment. Their recollections of the words he used did not all accord one with the others, but were sufficiently similar to satisfy me that something of that sort was said. I am satisfied that while the others may not have expressed themselves as dramatically as Police Constable Wyville did, their presence and their words and attitudes expressed their great concern for Kim's safety and their objection to her being returned to her parents' home.

The four who visited Mrs. Harvey all testified that, notwithstanding their objection, Mrs. Harvey insisted and persisted in her decision that Kim was to be returned to her parents.

Mrs. Kirby testified that when Mrs. Harvey spoke of returning Kim she spoke as if she might do so even before the matter came on for hearing in Court. Mrs. Kirby said she voiced her objection to any such possibility.

Unlike the others, Mrs. Harvey could not remember that remark by Police Constable Wyville. She did not feel that Mrs. Kirby had voiced objection to the concept. Her version of the discussion was that she might have told the others that Kim would eventually be returned to her parents' home.

Mrs. Harvey had accepted as a starting point for the management of Kim's case the hypothesis that, where it is at all possible, it is better for a child to be in his or her own home rather than in a foster home. She said that she did not then have any plans to return Kim to her home "at that time," but she did have plans to return Kim "eventually." Her view was that the others were concerned over the possibility of Kim being returned at that time and had not voiced any objection to the possibility of her return at any later time. She in effect was saying their concern was premature as it was not her intention to return Kim on February 19, 1976, but she did intend to return her at some later undefined date.

Mrs. Harvey testified that she did not know when she had decided that Kim was to be returned to her home. She said "apparently at some point I made the decision that it would be worthwhile trying it." She said she probably made that decision before February 25, 1976 when the Society's application was heard in Court.

That being so and bearing in mind that on February 25, 1976, Mrs. Harvey sought an order placing Kim in the care of the Society for only two months it would seem that Mrs. Harvey was merely engaged in an exercise in semantics when she denied having on February 19, 1976 any plan to return Kim "at that time" and averred having then a plan only to return her "eventually." In the light of events Mrs. Harvey's use of the word "eventually" seems inappropriate.

Leaving aside the question as to when Mrs. Harvey decided "it would be worthwhile trying it," there remains the larger question as to the appropriateness of the decision and the manner in which it was reached. Mrs. Harvey gave no appropriate or satisfactory explanation for her decision. It was made against the advice of others in the Society and outside of it. It was a decision which was not acceptable to any of the expert witnesses who testified upon the Inquiry. Nothing in the factual circumstances justified Mrs. Harvey's decision that Kim would be returned.

In February, 1976 when she made that decision Mrs. Harvey knew virtually nothing about Kim's parents. She knew that Kim had been seriously injured on at least three occasions and that there were suspicions or suggestions of other incidents of injury. She knew that none of those incidents of injury had been investigated so as to indicate who had caused the injuries or why he, she or they had caused them. She knew that, despite her own acknowledgment of the correctness of Mrs. Saul's assessment that the case would require long involvement of the Society with the Popen family, her own belief that the Society "really needed to work with this family." Mr. Carter had been unable to carry out "routine or normal case work practices." She had had only passing contact with Annals Popen and Jennifer Popen in the courtroom or corridors of the courthouse on days fixed for trial or hearing. She knew Mr. Carter had not had much more contact with them.

When it was suggested to her that she had made the decision unilaterally, Mrs. Harvey responded as follows:

> "It would have been on the basis of reports and so on from workers and what not. I didn't go into the home."

That was a deliberately vague and misleading response. Her use of the expressions "and so on" and "and what not" are meaningless.

As to reports from workers, she had Mrs. Saul's report. It was admittedly preliminary and exploratory in nature and did not provide any basis to support a decision to return Kim to her parents.

Mrs. Dick's report related to events of August 31, 1975. It gave no basis of support for such a decision.

Mr. Carter had not placed any written record upon the file. He had spoken with Mrs. Harvey, but in haste. He had not carried out even "routine or normal case work practices." Whatever he might have told Mrs. Harvey would not provide any basis of support for such a decision.

Even if Mrs. Harvey had misunderstood Mr. Carter's position his appearance with Mrs. Kirby and the police officers in her office on February 19, 1976 should have shown Mrs. Harvey that she had misunderstood him and there was nothing in his records to support any decision to return Kim and he in fact opposed it.

Mrs. Kirby's recordings in the file of the Children's Services Department make no mention of the possibility of Kim's return to her parents. Mrs. Kirby's attendance in her office on February 19, 1976 should have shown Mrs. Harvey that Mrs. Kirby did not favour such a decision.

When asked if there was anything positive in the reports made to her on the Society's files up to February 25, 1976, Mrs. Harvey responded simply "Not particularly," but went on to say that a decision to work towards a child's return was not irreversible.

While Mrs. Harvey in her testimony used terms such as "we were working, we were going to try to get the child back home" she used the pronoun in the editorial, or almost the royal sense. Any decision to return Kim was made by Mrs. Harvey alone. She had no meaningful consultation with others, within or without the Society, who had been involved in the case. She made her decision over the strongly expressed objection of the police officers and Mrs. Kirby and Mr. Carter, the two workers in the employ of the Society who, to that time, had had responsibility for the management of the case. The following question put to Mrs. Harvey and her reply are revealing. She was asked:

> "Did anybody other than yourself make the decision to return Kim Anne Popen to her home or to work towards that?"
>
> She replied:
> "I don't believe so."

That was not a forthright answer. Nowhere in her testimony or that of anyone else was there any suggestion that anyone else participated in the decision.

On the testimony of the skilled and experienced social workers who testified upon the Inquiry, I find that that style or method of making decisions of such magnitude is unsatisfactory and unacceptable.

I appreciate that one person in authority may have to make any such decision and it may not be acceptable to others. But the accepted, conventional and satisfactory method of arriving at the decision is to consult with others involved in the case or having particular skills or experience which will be helpful. Then the person charged with the responsibility should properly weigh and evaluate the various opinions expressed by the participants in the consultation. It should not be merely a facade of consultation followed by an unreasoned decision against the weight of opinion expressed during the consultation. It should not be merely the reaffirmation of a decision made by the person in the position of authority and maintained by that person against the weight of such opinion.

Mrs. Harvey made the decision without consultation and persisted in it even in the face of objection from others who had been involved. Mrs. Harvey did not approach Mrs. Lois Archer, Supervisor of the Children's Services Department or Mr. Lovatt even after February 19, 1976 when the correctness of her decision was questioned. She was satisfied that she was right and did not feel she needed to obtain any other opinion.

This was an example of Mrs. Harvey's dominating personality and behaviour. It was an imposition of her will, without reasonable basis in fact or theory, upon Mr. Carter and Mrs. Kirby and the police officers. She abused the power of her office as Supervisor of the Family Services Department.

That imposition of her will upon others continued into May, 1976 when Kim was returned. The organization of the Society which gave the Family Services Department a position of precedence or dominance over the Children's Services Department in cases in which both were involved, as here, prevented Mrs. Archer and Mrs. Kirby from effectively opposing Mrs. Harvey. Mrs. Archer did not resist in any way and Mrs. Kirby did not resist after February 19, 1976. I do not suggest that Mrs. Archer and Mrs. Kirby were weak. Past incidents showed them that the organization of the Society made Mrs. Harvey pre-eminent and made resistance to her futile.

Mrs. Harvey was able to impose her will upon the police officers not because of any weakness on their part, but because of the practicalities of the situation. Kim was in the care of the Society. In matters of child welfare the children's aid society is accepted as being the dominant social agency both in law and in fact. While the police officers technically were empowered to apprehend Kim if there was basis therefor under the provisions of The Child Welfare Act I cannot see police officers in a practical situation apprehending a child as being a child apparently in need of protection if the local children's aid society insists the child is not in need of protection. It might very well occur in a most flagrant case. In calm retrospect Kim's might be seen to be such a case. But one can understand the deference shown by the police officers to Mrs. Harvey.

Mrs. Harvey in one of her responses sought to justify her decision to return Kim to her parents. She spoke of the good that might come to the community if, from Kim's return home, her parents were to learn how to raise children and thus care for other children who might be born to Jennifer Popen, a still young woman. She spoke of benefiting those as yet unborn children, but at the same time not risking Kim, the first child.

When asked if it did not seem to be an inappropriate case for the return of the first-born, she replied "...I thought we could try it." Her use of pronouns make it clear. She thought the Society could try it. My earlier reference to lack of reason or justification for Kim's return is applicable. Mrs. Harvey has not shown any basis for her decision. Of all who testified upon the Inquiry only she tried to defend it. Her attempt was futile.

The second incident to which I referred was the decision to relieve Mr. Carter of responsibility for Kim's case and to assign that responsibility to Mrs. Lo. It too was an instance of a decision being made by Mrs. Harvey impulsively, without appropriate consideration of the opinions of others and without adequate information or reason to support the decision. That decision was followed by equally impulsive action to implement it.

On all of the evidence of the experienced and skilled social workers who testified upon the Inquiry that decision to transfer the case to Mrs. Lo was an indefensible error and contrary to good practice. They saw no justification for the decision.

It was preceded by another instance of decision and action by Mrs. Harvey without consultation and without proper basis therefor. That was Mrs. Harvey's decision, announced in open Court on February 25, 1976 to Mr. Carter's surprise, to ask for an order placing Kim in the care of the Society for only two months. Until then all discussion had been directed towards an order of six months wardship. Although he had been in charge of the case for almost six months and had prepared the Society's application for presentation in Court, he had not been advised of Mrs. Harvey's decision and had not been consulted about it in any way. There was no testimony to indicate Mrs. Harvey had discussed the subject matter of that decision with anyone.

Then immediately after conclusion of the hearing on February 25, 1976, Mrs. Harvey announced to Mr. Carter that he would no longer be responsible for management of Kim's case and that Mrs. Lo would be assigned to the case.

In her testimony Mrs. Harvey mentioned several reasons which she relied upon as justifying her decision.

In support of her decision to remove Mr. Carter from the case she spoke of his heavy case load and of her desire that Kim's case receive a great deal of service. She said that because he had been involved in some cases for long periods of time it would have been inappropriate to relieve him of other cases so that he might devote the necessary time to Kim's case.

In support of her decision to assign the case to Mrs. Lo she spoke of Mrs. Lo as being closer in age to Jennifer Popen, as having a confident manner, as being a good student prepared to read to learn her craft, and as being one who had a significant comprehension of events. She said Mrs. Lo was well-liked and respected by others in the Society.

Mrs. Harvey acknowledged that Mr. Carter was a good social worker with experience in cases of child abuse whereas Mrs. Lo had little experience or training in social work in general and none whatsoever in cases involving child abuse.

She acknowledged that Mr. Carter had good relations with community resources, including police and medical people. Mrs. Lo had not developed those relationships.

In testifying upon the Inquiry, Mrs. Harvey defended her assignment of the case to Mrs. Lo. After reciting her assessment of Mrs. Lo's attributes, which I have somewhat condensed above, she went on to say:

> "..., she was under a period of intensively close supervision, she had had the advantage of being (sic) the experienced worker in the same room for a month and picking up tips on doing this. She had weekly, lengthy, weekly, supervision with me in which we discussed agency and case matters, social work, concepts, techniques of working, and she had team meetings once a week. Her training was really quite intensive."

That answer certainly gilds the lily. I have commented on it in an earlier portion of the Report. I share the view of the members of the Farina Committee as set forth in the first version of their report, signed by all three members. That view is as follows:

> "..., we question the method used in transferring this case and note that transfer

> should be for the benefit of the client and keeping in mind, in this case, the planning and protection of the child, Kim. In considering the method used in transfer we must question the supervisor's use of her authority, as well as her professional practice.
>
> Rationale for transfer is also questionable. Any case as obviously serious as this one should never be assigned to an inexperienced worker with no social work education or experience and we note that Mrs. L[o] had been with the society less than three months. It is recommended practice in cases of child abuse that these cases be assigned to the most experienced, well qualified personnel. Assignment of this case to a person with virtually no protective service experience and no social work qualifications was a gross error in judgement on the part of the supervisor."

What Mrs. Harvey presented as her reasons for transferring the case from Mr. Carter to Mrs. Lo are not valid.

Without exception those with social work skills and experience who testified upon the Inquiry said that cases of child abuse are among the most serious and most difficult dealt with by children's aid societies. They require workers who have had practical experience to support their academic knowledge. The symptoms of child abuse are often difficult to recognize. They are subtle. Management of such cases often requires the involvement of a number of persons possessing a variety of knowledge and skill. Such knowledge and skill will not necessarily be found within one community or social agency.

Mr. Carter was an experienced social worker with the Society. He had experience with other cases of child abuse. He had developed working arrangements with others outside of the Society whose support and assistance, either as individuals or, perhaps more importantly, as representatives of other social or community institutions or organizations, were available to him if needed.

Mrs. Lo, with all the intelligence and abilities she may have possesed and all the good intentions she may have had, did not have the knowledge and experience and community connections which were needed to manage Kim's case.

Mrs. Harvey's decision to assign the case to Mrs. Lo was one of the gravest errors she made in relation to Kim. I do not believe that the real reason for that decision was given in testimony. The reasons stated by Mrs. Harvey do not stand up to scrutiny. She should know it.

The manner in which that decision was reached was not satisfactory. It was contrary to what was presented as the practice of the Society. That practice was to have a meeting of the team of workers to which the workers involved with the case belonged. The supervisor would attend. The case would be discussed by everyone present, even those who had not been directly involved in the case. The discussion would seek to determine whether, having regard to the specific case and to other cases as well, it was necessary or advisable to transfer the case from the worker to whom it had been assigned. Then, if that was decided in the affirmative, the discussion would seek to ascertain to what other member of the team the case should be assigned.

In Kim's case there was no such meeting. There was no such discussion. There was no such determination.

Mrs. Harvey made the decision in isolation. Even apart from her failure to meet with the team of workers as she should have she did not discuss the possibility of transfer even with Mr. Carter. She did not have any personal knowledge of the particulars of the case. Mr. Carter had written nothing in the file. Even on her own testimony her dealings with Mr. Carter with reference to the case were hurried and she could not recall that they related to the details of the case.

From the scanty presentation of the Society's application in Court, I am satisfied that Mrs. Harvey knew very little about Kim's case as an individual case. She had decided to apply to it the general philosophy which she said then existed in the

Society. She had determined that the "working hypothesis" for Kim's case was that the child should be returned to her home. That decision was not based on consideration or knowledge of the particular circumstances of Kim and her parents.

The testimony in this area is sufficient to permit me to draw from it an inference that there was a connection between the confrontation of Mr. Carter and others with Mrs. Harvey on February 19, 1976 and Mrs. Harvey's two decisions, announced to Mr. Carter six days later, that the Society sought only two months' wardship and that he would no longer be responsible for the case.

It is interesting also to note Mrs. Lo's testimony in this area. She learned from Mrs. Kirby that the case might be assigned to her. She felt that was in February before the wardship hearing. Thus again Mrs. Harvey made the decision to transfer the case to Mrs. Lo without any prior discussion of it with Mrs. Lo.

Mrs. Harvey had made her decision without any discussion with the two workers directly affected by it.

I am not to be taken as suggesting that Mrs. Harvey was not entitled, as Supervisor, to make the decision. She was so entitled. But the practice of the Society was to have a team meeting to discuss the matter.

On all of the evidence upon the Inquiry, I am satisfied that that is a normal and acceptable practice in relation to proposed transfers of cases.

As I have written earlier, there was no such meeting and there was no such discussion.

Assuming that Mrs. Harvey in any such meeting or discussion would have supported the proposed transfer for the reasons she gave upon the Inquiry, those reasons would then have been shown to be as specious and invalid as I have found them to be.

Having made the decision to transfer the case, Mrs. Harvey again failed to follow the more usual practice of the Society. She did not arrange a meeting with Mrs. Lo and Mr. Carter to ensure for the orderly transfer of the case. She did not arrange for Mrs. Lo and Mr. Carter to visit the Popen home together to inform Annals Popen and Jennifer Popen of the transfer and what was involved in it.

From February 25, 1976, Mrs. Harvey did not fully and properly perform her duties as Supervisor of Mrs. Lo's activities.

Mrs. Harvey made no notes of the reasons for judgement given by Judge Nighswander and she did not arrange for the Children's Aid Society to receive a transcript of the proceedings in Court on February 23 and 24 and March 29, 1976. She did arrange for Mrs. Lo to be present in Court when Annals Popen was sentenced on March 29, 1976.

She did not ensure that the Society received a copy of the pre-sentence report prepared by Mr. Brouwer and presented in Court on March 29, 1976. She did not in any way seek to ensure that any of the concerns voiced in the pre-sentence report and its accompanying documents were met.

Mrs. Harvey did not adequately instruct Mrs. Lo as to her duties and obligations and powers. After Kim was returned to her parents on May 27, 1976, Mrs. Harvey did not instruct Mrs. Lo to undress Kim on occasion to examine her outward appearance. She did not instruct Mrs. Lo to arrange for Kim to be examined by a medical doctor.

Mrs. Harvey did not adequately instruct Mrs. Lo as to the matters which should be of concern to her. She did not inform her that some things might be regarded as danger signals, signals that Kim might be in danger. Some such things were the variety of inconsistent stories told by Jennifer Popen with reference to how Kim was injured, stories that were not compatible with the nature and extent of the injuries. Another was the personal history which Jennifer Popen had given and in which she claimed to have been abused in different ways as a child.

The meeting of May 6, 1976, in which it was decided to return Kim to her home before the birth of

Jennifer Popen's next child, which was anticipated to occur in July, would, in other circumstances, have been an appropriate meeting. But in Kim's case it was of limited value because it was circumscribed by Mrs. Harvey's earlier decision that Kim would be returned home. All that was left to be decided in May was whether the return would be effected before or after that birth.

At that meeting no one questioned Mrs. Harvey's decision that Kim would be returned. The police officers who questioned it in February were not at the meeting. Mr. Carter was not there.

Mrs. Kirby was there, but she felt she had adequately and fully expressed her objections in February. Like others who testified, she understood that the organization of the Society gave to the Family Service Department the authority and responsibility to make such a decision. She was not a member of that Department.

Mrs. Archer was there. She was Mrs. Kirby's supervisor. She too understood that the duty and the power was on and in the Family Services Department and its Supervisor, Mrs. Harvey.

Mrs. Lo was there. In all of the circumstances of her own lack of knowledge, skill and experience in child abuse cases she could not have been expected to question the basic decision made by Mrs. Harvey. She did not.

That effectively destroyed the validity of that meeting. It was not a meeting which was meaningful and which would meet any acceptable standard of a free exchange of information and opinions which the witnesses upon the Inquiry testified was required.

Subject to that limitation the meeting determined that Kim's return should be effected before the birth. That meant that the period within which it could be effected was limited to about two months. The decision was made accordingly.

From the testimony upon the Inquiry and from the recording in the Society's files, I am satisfied that at least two factors were given undue consideration during the meeting of May 6, 1976. They were the attendance of Annals Popen and Jennifer Popen at the Parent Effectiveness Training Course and Annals Popen's attendance at Alcoholics Anonymous.

Under the date of March 29, 1976 Mrs. Lo had written in her recording in the Society's file:

> "...Due to his involvement with A.A. and apparent intention to enroll in the Parent Effectiveness Training Course, Mr. Popen was put on probation..."
>
> Under the date of April, 1976 she wrote:
>
> "Mr. and Mrs. Popen really need to go to the P.E.T. course to acquire enough knowledge on disciplining children."
>
> "...Mr. Popen has been going to A.A. meetings and stated that he felt so much better because he can control himself now..."
>
> "...The P.E.T. course started on April 26th. The Popens enjoyed the course very much. They were fascinated by their teacher, Mr. Jim Stevens, and thought he was wonderful. At first, they said, they were a little shy but when Mr. Stevens started to talk they became very interested and forgot about their shyness. Mr. Popen has been having problems with his eyes and cannot read too long. They decided to take turns. Mr. Popen would read one page and Jennifer would read another. Mr. Popen also found it hard to write because he uses his left hand. Nevertheless, they planned to either have him write his own answers slowly or give his answers to Jennifer for her to put down. They understand the only way for them to learn anything in this course is to answer their questions honestly and try to apply what they discuss in their class to their daily lives. Mrs. Popen felt most people had problems with teenagers than with younger children. They were encouraged to bring up their interests and questions with younger children in the class too."

Under the date of May 6, 1976, she wrote:

> "...Since the home situation has been greatly improved and both parents are doing their best to get things out of the P.E.T. course, it is determined when the home visit be made before we decided which alternative between the two we are going to choose...
>
> ...They [Annals Popen and Jennifer Popen] also were urged to apply to each other what they have learned at the P.E.T. course..."

Having heard all of the evidence upon the Inquiry, I am unable to find any valid reason for Mrs. Harvey and Mrs. Lo to have placed so much emphasis upon what they perceived to be the value of the Parent Effectiveness Training Course to Annals Popen and Jennifer Popen and their family.

The Parent Effectiveness Training Course was not designed to deal with problems of child abuse or to assist parents who had abused their children or might abuse them. Mrs. Harvey knew that.

Upon the Inquiry she responded to a series of questions as follows:

> "Q. To your knowledge was the Course designed to prevent child abuse?
>
> A. No.
>
> Q. It was more designed to teach parents how to raise children and how to discipline them properly and direct children in the proper way, isn't that right?
>
> A. Yes. Parenting skills.
>
> Q. Parenting skills, that's a good expression. So that it wouldn't be much protection against a child being abused, the fact that they were taking that Course.
>
> A. Indirectly there would be.
>
> Q. Alright, can you explain why?

A. Yes. One of the problems in a child abusing household is lack of communication and lack of cohesion between the parents.

Q. Lack of communication between the parents?

A. Well, cohesion in methods and so on. If, and one of the real problems with Mr. and Mrs. Popen were that they couldn't talk together, they reacted against one another, they didn't communicate. If you can get communication going between two people your chances of their acting together rather than separately are much much greater. Then, you can reach them with acting together on behalf of the child.

I might explain one other thing about the use of the Parent Effectiveness Course (sic). We had searched high and low in the community to find something that we could provide for this family over and above counselling. You can't be there twenty-four hours a day. We wanted to have a learning process in addition to what we had, and all we could find in the community that was available to us was the Parent Effectiveness Training Course and I had been discussing it with Mr. Stevens beforehand."

I am unable to attribute much weight to Mrs. Harvey's view that attendance at the Parent Effectiveness Training Course would be of value in Kim's case. The course was not designed to assist abusing parents. By Mrs. Harvey's own words, it was all that the Society could find. I sense it was a sort of last resort, or facade of positive action by the Society regardless of its relevance to the problem. The instructor was not aware of the suspected presence of child abuse in the Popen household.

It is even more surprising that attendance at that Course would be an important factor in any decision made on May 6, 1976. In her recording for April, 1976 Mrs. Lo wrote that the particular Course to be attended by Annals Popen and Jennifer Popen began on April 26, 1976. There was testimony that it did not begin until April 28, 1976, but the difference of two days is not important. There was no satisfactory evidence as to how many sessions of the Course had been held between April 26 and May 6, 1976 or at how many of those sessions either or both of Annals Popen and Jennifer Popen had attended or what benefit, if any, they had derived from such attendance. Possibly two sessions were held. Even if Annals Popen and Jennifer Popen had attended both sessions, it would not seem that such attendance would justify any conclusion that it contributed to whatever motivated Mrs. Lo to write as she did on May 6, 1976 that the home situation was greatly improved and the parents were doing their best to get things out of the course. That they were "doing their best" does not mean they were getting anything out of the Course.

In her testimony upon the Inquiry, Jennifer Popen described the Parent Effectiveness Training Course as one designed for parents of older children. She had discussed it with Mrs. Maughan. Mrs. Maughan in her testimony expressed her doubt as to any value derived by Annals Popen and Jennifer Popen from the Course. In light of that evidence and Mrs. Lo's own earlier recording, reproduced above, setting forth some of the problems encountered by Annals Popen and Jennifer Popen upon the Course, I doubt that they received any benefit from it. Kim's death supports my view.

Mrs. Lo's testimony that the Course was to help parents communicate with the child was an illustration of her naivete. It corresponded in part with Mrs. Harvey's view that the Course assisted in establishing communication between the parents. I am not satisfied that Mrs. Lo had any independent idea as to what the course contained or what value might flow to Annals Popen and Jennifer Popen from it.

It is tragic that Mrs. Harvey deluded herself as to the value of the Parent Effectiveness Training Course in Kim's case. That Annals Popen and Jennifer Popen were attending the Course and that the Society had made arrangements for them to do so affected the actions of others.

Mr. Brouwer spoke of it in the pre-sentence report. He viewed it positively. Mrs. Lo had told him about it.

Judge Nighswander considered the pre-sentence report on March 29, 1976. It would have had some bearing as the learned Provincial Judge deliberated and decided upon an appropriate sentence for Annals Popen and the terms of probation.

Mrs. Lo, subordinate to Mrs. Harvey, certainly believed that the course was of value.

It was only upon the Inquiry that Mrs. Harvey acknowledged that the Course was a facade in relation to Kim's case. Even then it was not a forthright acknowledgement. She said:

> "We had searched high and low in the community to find something that we could provide for this family over and above counselling...all we could find...was the Parent Effectiveness Training Course..."

Words such as those are not a strong endorsement of the value of the course to the Popen family.

In my belief that reliance on the involvement of Annals Popen and Jennifer Popen in the Parent Effectiveness Training Course was merely a facade, I am supported by other portions of the testimony upon the Inquiry and the absence of testimony in other areas. I have spoken of the short period between April 26 and May 6, 1976. There was testimony to the effect that the Course would involve sessions over eight weeks. There was no testimony of any effort by Mrs. Lo or Mrs. Harvey to inquire of anyone other than Annals Popen and Jennifer Popen as to their attendance upon the Course and its value to them. It would seem that further inquiries would have been a natural extension of any genuine reliance upon the Course as an important factor in decisions in Kim's case.

The testimony was that Mrs. Harvey did not discuss Annals Popen and Jennifer Popen with the director of the Parent Effectiveness Training Course until after its conclusion. That would have been in mid or late June, 1976, two weeks or more after Kim's return home and five or six weeks after the May 6, 1976 meeting at which the date of her return was determined. Only then did she advise him of their particular problem of suspected child abuse.

She defended her decision to keep that information from the Course director. She said she felt it might have exposed Annals Popen and Jennifer Popen to unwarranted problems in the Course. I cannot follow the logic of that. Surely she must have had confidence in the director. Surely that confidence would extend to reliance upon his judgement and discretion as to how he might use that information. It is my view that, in the circumstance of the Course not being directed generally into the area of child abuse, Annals Popen and Jennifer Popen would receive help from it for their special problem only if the director were aware of that problem and able to adjust the content of the Course to meet it.

I am satisfied that, through no fault of the director of the Parent Effectiveness Training Course, it was of no value to Jennifer Popen and Annals Popen in relation to Kim. Inadvertently, because of the sham created by Mrs. Harvey, it contributed to the tragedy surrounding Kim. Others mistakenly relied upon what they took to be positive action by the Society and Mrs. Harvey's endorsement of the Parent Effectiveness Training Course after, presumably, appropriate investigation and assessment of its content in relation to the problem or problems in the Popen household.

In truth, Mrs. Harvey and the Society really did not know what problems were in that household.

I find it of interest to note that throughout the written records of the Society, the emphasis is upon the benefit which Annals Popen derived from the Parent Effectiveness Training Course. My interest is aroused because Mrs. Harvey on a number of occasions, while testifying upon the Inquiry, stated her certain belief that Jennifer Popen was the abusing parent and the parent to whom the greater effort by the Society should be devoted.

One such instance occurred when Mrs. Harvey was asked a series of questions and responded as follows:

> "Q. Was the Parent Effectiveness Training Course taken into consideration at that meeting? [the meeting of May 6, 1976]
>
> A. Yes, it was, because a course like that is much more effective if the child is there, because you have to discuss experiences with the child on an ongoing basis. I wouldn't have returned her just because the parents were going to the Parent Effectiveness Training Course though.
>
> Q. No. Well, were you concerned during this period of time as to which of the two parents was causing injury to the child?
>
> A. No.
>
> Q. All right. Do you want to elaborate on that?
>
> A. I was sure it was Jennifer.
>
> Q. You were sure it was Jennifer?
>
> A. Yes.
>
> Q. Oh now, I think you're the first person who's indicated that. What did you base that opinion on? I'm talking about May of 1976, you were sure...
>
> A. I was sure from the very beginning of our contact with the case that it was her.
>
> Q. What did you base that on?
>
> A. The nature of the injuries and her attitude and the father's personality.
>
> Q. Did you express this to Mrs. Lo?
>
> A. Oh yes.

> Q. You told her that it was Jennifer that was injuring...
>
> A. I told her I was pretty sure and we would focus on Mrs. Popen no matter what the court said or found or who they found guilty, that Mr. Popen had his probation officer and we would work with him too, but that we would focus our attention on the mother, because we were sure she was the one.
>
> Q. Mrs. Lo was sure as well?
>
> A. Well, I don't know whether she was as convinced as I was, but I was convinced.
>
> Q. What about Mr. Carter?
>
> A. I don't know.
>
> Q. You never discussed it with him?
>
> A. No, not that I remember anyway."

Despite the certainly in her own mind, Mrs. Harvey permitted others to feel that the attendance of Annals Popen at the Parent Effectiveness Training Course was a positive advantage to Kim's case. Among those others was Mr. Brouwer who, in part because of information from Mrs. Lo, wrote optimistically of the future for Annals Popen and Jennifer Popen. Mrs. Lo told him that Jennifer Popen would be attending the Parent Effectiveness Training Course. As Mrs. Lo's supervisor, Mrs. Harvey was or should have been aware of that. She did nothing to alert Mr. Brouwer that the Children's Aid Society intended to devote greater attention to Jennifer Popen. Indirectly, because of the pre-sentence report, Judge Nighswander may have been misled as to the value of the Parent Effectiveness Training Course in this particular case.

Another facade or sham was Annals Popen's involvement with Alcoholics Anonymous.

Mrs. Harvey's involvement in the sham is surprising. On her own testimony Annals Popen's participation in or attendance at Alcoholics Anonymous should not have been of any great importance in relation to Kim's care and safety. I have already set forth one portion of her testimony indicating her certain belief that Jennifer Popen was the abusing parent.

Thus, it is even more difficult to understand why Mrs. Harvey would permit so much positive emphasis to be placed on Annals Popen's attendance at Alcoholics Anonymous. With reference to the Parent Effectiveness Training Course, Jennifer Popen was expected to attend with Annals Popen, so she would be expected to receive from it whatever Annals Popen might have received. But Jennifer Popen did not attend Alcoholics Anonymous.

That Mrs. Harvey would permit the sham is consistent with her actions in Provincial Court (Family Division) when Jennifer Popen testified. Mrs. Harvey made no effort to advise Judge Nighswander of her belief as to Jennifer Popen's involvement with Kim's injuries. She did not cross-examine Jennifer Popen who testified as to injuries suffered by Kim at the hand of Annals Popen when he had been drinking.

Again Mrs. Harvey knew, or should have known, if she was properly performing her supervisory duties, that Mrs. Lo had been interviewed by Mr. Brouwer while he was preparing the pre-sentence report. Mrs. Lo told Mr. Brouwer of Annals Popen's attendance at Alcoholics Anonymous and the positive results flowing therefrom. That too may have had some bearing upon Judge Nighwander's decision as to an appropriate sentence for Annals Popen.

The next criticism of Mrs. Harvey relates to her failure to act appropriately on July 26, 1976 when Mrs. Lo reported orally that she had noticed some changes in circumstances within the Popen home. Those changes related particularly to Jennifer Popen's attitude and behaviour.

Mrs. Harvey contented herself by advising Mrs. Lo to prepare, file and serve an application for an order placing the Society in a position of supervision of Kim's care.

Knowing as she did that Kim had been abused in the past and suspecting as she did that Jennifer

Popen was involved in that abuse, Mrs. Harvey should have done more. She should have arranged for a more experienced worker, perhaps even Mrs. Harvey herself, to visit the Popen home with Mrs. Lo and to undertake whatever other action might be advisable to determine if Kim should be removed at that time. Kim was still, by virtue of Judge Nighswander's order of February 25, 1976, a child in need of protection and in the care and custody of the Society. Mrs. Harvey should have realized that Kim was in a situation in which she might be abused. Mrs. Harvey should have remembered that police officers, Mrs. Kirby and Mr. Carter had forcefully expressed opposition to the basic decision to return Kim even if no one apposed the subsidiary decision that the return be in May 1976.

On July 26, 1976, Mrs. Harvey failed Kim by leaving her in that position of possible danger without any consideration as to the extent of the risk and the advisability of removing Kim again.

But for the vigorous representations of others after Kim's death, Mrs. Harvey would have repeated her lack of thought and action in relation to Kim's infant brother. Until others pressed her, Mrs. Harvey did not feel she was entitled to remove that infant from his home.

This leads into another area of criticism of Mrs. Harvey. Despite her training, experience and supervisory position she lacked a satisfactory knowledge of the provisions of The Child Welfare Act at least with reference to some of the matters that arose during Kim's case.

She knew that Mr. Carter was accepting Mr. Higgins' stricture. He was staying away from Jennifer Popen and Annals Popen and thus was not performing his duties. She did not even contemplate that it might have been appropriate to advise Judge Nighswander of the circumstances and seek some clarification of the position. She said that it was not until much later that she learned that she could have returned to the Court to seek some judicial assistance to permit the Society to fulfill its duties. She did not even feel it necessary to speak to Mr. Lovatt for his advice or for authority to retain a solicitor.

She testified that she, like Mr. Carter, was distressed by the arrangement to accept Annals Popen's plea of guilty to the charge under section 40 of The Child Welfare Act and to withdraw the charge against Jennifer Popen. She said that seriously affected the application of the Society for an order placing Kim in its care. She felt it prevented her from presenting all the evidence which until then she intended to present. I have already commented upon the inadequacy of her presentation of that application.

Mrs. Harvey was in serious error in that understanding. The two proceedings were separate and distinct. There is provision for them to be joined, but that was not done or even contemplated. The finding of guilt against Annals Popen would certainly strengthen the Society's application. The withdrawal of the charge against Jennifer Popen would not in any way, in law, inhibit the Society, upon its application, seeking to show that Jennifer Popen was involved in some way, directly or indirectly, with Kim's injuries. The withdrawal of the charge against Jennifer Popen was not a finding adverse to or binding upon the Society in performance of its duties. That withdrawal did not render inadmissible any evidence that otherwise would have been admissible upon the hearing of the Society's application.

In any event, I have found that the Society were apprised of Mr. Higgins' proposal and did not object to the intention of the Crown Attorney and the Sarnia Police Force to accept it. Mrs. Harvey was in Court on behalf of the Society on February 23, 1976 when the proposal and acceptance were implemented. She did not voice any objection. If she had any concern about the effect that might have upon Kim, she owed it to Kim to voice the concern. She did not speak up.

While Mrs. Harvey was aware that The Child Welfare Act contemplated renewal, variation or rescission of any order thereunder, she was not aware that Mrs. Lo lacked that knowledge. Mrs. Lo testified that she understood the initial order of February 25, 1976 prevented the Society from seeking any greater or other order. That indicates a failure by Mrs. Harvey, as Supervisor, to ensure that Mrs. Lo had an adequate knowledge of the provisions of The

Child Welfare Act. If Mrs. Harvey was aware of Mrs. Lo's lack of knowledge, her failure to instruct Mrs. Lo and correct her misunderstanding is all the greater.

All of the criticism which falls on Mrs. Harvey is as a result of her own personality and attitude. Her qualifications for her position as given by her appear adequate. In practice they are less so.

While Mrs. Harvey belittled any suggestion that she was a dominating and unapproachable supervisor I find she was such a supervisor.

She demonstrated that forcefulness when she persisted in her decision that Kim was returning home even in the face of strong objection from police and the Society's personnel.

The two employees of the Society who objected to her decision were removed from responsibility for it. Mr. Carter, who was subordinate to Mrs. Harvey, was directly and promptly removed by her. Mrs. Kirby, who was not directly subordinate to Mrs. Harvey, was indirectly removed in due time by the process of implementation of Mrs. Harvey's decision within the framework of the organization of the Society which gave the Family Services Department, and thus Mrs. Harvey, a pre-eminent position of authority.

She demonstrated the forcefulness of her approach when she spoke of her ability to oppose counsel in court. That same belief in her own ability is shown by her decision to proceed on Kim's case without retaining counsel.

Even that showed a bit of her assessment of her position within the Society. She was asked if she would have needed permission from Mr. Lovatt before retaining counsel. She replied that she might discuss the matter with Mr. Lovatt, but she did not require his permission.

That reply is directly contrary to the resolution of the Board of Directors passed in her presence. By that resolution, counsel were to be retained only if Mr. Lovatt thought it necessary.

Still another example of her self-confidence was her testimony to the effect that with training or education, presumably by her, Mr. Higgins could become a good member of the Board of Directors of the Society. He was the man whose talents and abilities as counsel were admired by her. He was the man who had successfully stood off the Society for almost six months until the time was appropriate for his clients to have a resolution of the matter. I know Mr. Higgins only as a gentleman who testified upon the Inquiry. My assessment of him is that he was not too likely to accept the concept that Mrs. Harvey could train or educate him.

Perhaps the most telling assessment of Mrs. Harvey's nature and attitude came in the testimony of Mrs. Farina whom I have earlier described as being a gentle and compassionate woman.

A question was put to Mrs. Farina with reference to a workshop convened by the Ontario Association of Children's Aid Societies. The workshop was with reference to court services. She was asked if she had spoken to Mrs. Harvey about it. Her reply was as follows:

> "A. Yes. At that time, they would have been in the Fall of 1975 and we had arranged a court workers 2-day workshop for court workers of the societies and we sent out our advance material and had heard from all but two of the societies, of people wishing to attend. One of those two was Sarnia, so I phoned to be sure that, you know, that they had got the material. The second society was one of the more remote Northern ones and they hadn't got the mailing, but Sarnia had and since Mr. Lovatt was away I spoke to Mabel Harvey and asked her if people, in fact, from Sarnia were planning to attend and I was told that no, they weren't, and that really the Association had nothing to offer that would be of help to this Society, and conversation. So that was my conversation then with Mrs. Harvey."

That reveals a lot. It shows that Mrs. Harvey felt that the Society could not benefit from the workshop. It is broad enough to show that she felt the Society could not benefit from anything the Ontario Association of Children's Aid Societies might have to offer. Forty-eight of the other forty-nine children's aid societies in Ontario were sending staff members. The forty-ninth was in a remote area and had not received notice of the workshop.

When one thinks of all of the shortcomings of the Society described in the testimony upon the Inquiry, even the testimony of directors, officers and employees of the Society, and particularly the testimony of Mr. Zwerver, Mr. McCabe and the members of the Farina Committee, it must have taken quite a person to maintain that the Ontario Association of Children's Aid Societies had nothing to offer to the Society.

Surely as Mrs. Harvey reflects now upon Kim's case and the Inquiry she must realize how wrong she was. She must realize that the Society needed help.

That attitude by Mrs. Harvey was perhaps an enlargement or a manifestation of what I describe as the insular position of the Society. In the main that was demonstrated by the almost complete absence of communication between the Society and other organizations or individuals in the community in relation to Kim's case. What little communication there was, was initiated by others. Only once, on July 26, 1976, did the Society initiate a communication. Mrs. Lo telephoned Mr. Brouwer.

Mrs. Harvey was, in practice, supreme within the Society in relation to the management of cases. She had an over-abundance of self-confidence and assurance in her own abilities. She imposed her untrammelled will upon others in the Society. She sought assistance from no one. She rejected, out of hand, suggestions made to her.

The self imposed isolation of the Society was a great weakness.

I have already written of Mrs. Harvey's testimony wherein, when speaking of her decision that Kim should be returned to her parent's home, she said "apparently at some point I make the decision that it would be worthwhile trying it." At another point, in the same context, she said "I thought we could try it."

There was no valid support for that decision. All of the expert testimony condemned it.

With all due respect to Mrs. Harvey, she reduced the basis for the decision to one of "trying." There was an element of experiment or test or perhaps even gamble in her decision to try. She was prepared to conduct an experiment without any professional basis therefor or control thereof. Mrs. Harvey was prepared to risk Kim's safety.

The experiment was doomed to tragic failure. Without professional basis or control it was no more than a gamble. Mrs. Harvey gambled. Kim's safety was at stake. Kim lost.

Chapter XV

The Role of William J. Lovatt

In Chapter XIV I state that, apart from Kim's parents, Mabel Harvey was the most important person in Kim's life from June 17, 1975 until her death on August 11, 1976.

Mabel Harvey assumed that importance only because of the failure of William J. Lovatt, Local Director of the Society during all of Kim's life, to perform his duties and fulfill his responsibilities adequately or reasonably.

Perhaps in keeping with the tone of the entire operation and administration of the Society during Kim's life that failure of performance was not the result of a formal and structured assignment of duties by Mr. Lovatt to Mrs. Harvey. It came about as a result of Mr. Lovatt's self-imposed restriction of his activities within the Society and his tacit consent to Mrs. Harvey's assumption of or ascendancy to authority.

If Mr. Lovatt's involvement and interest in Kim's case was typical of his involvement and interest in the cases or matters being dealt with by the Society, it is clear that he was derelict and incompetent in the performance of his duties. There was no testimony upon the Inquiry to satisfy me that Kim's case, insofar as Mr. Lovatt's involvement and interest was concerned, was in any way atypical.

In the sense of the nature of the case and the severity and multiplicity of the injuries which Kim suffered through the periods of her life while she was in her parents' home, Kim's case was atypical. No one of the personnel of the Society who testified upon the Inquiry suggested there had previously been such a case dealt with by the Society.

But even a case of that severity was not sufficient to draw Mr. Lovatt from his apparently all-consuming interest in and concern about the financial and budgetary aspects of the Society's administration.

Mr. Lovatt testified to the effect that his office door was open to the staff of the Society and to others at any time. He seemed to take great pride in that. It may be that his door was physically open, but it would seem that in some way Mr. Lovatt sheltered behind an intangible, but virtually impenetrable screen across the doorway to his office.

The testimony upon the Inquiry which is reviewed in some detail throughout the Report was overwhelmingly sufficient to satisfy me that during Kim's life the organization, administration and operation of the Society were not adequate or satisfactory.

The testimony clearly and amply demonstrated that the practices and procedures employed by the Society, especially in relation to the management of Kim's case, did not satisfy or meet usual, normal or reasonable standards.

The testimony clearly and amply demonstrated that the personnel of the Society, including Mr. Lovatt, and especially those most actively involved in Kim's case, lacked knowledge and expertise which would usually, normally and reasonably be expected to be possessed by social workers responsible for the management of such a case.

All of that is substantially borne out by the testimony of one or more or all of Mrs. Farina, Mr. Heath and Mr. Petersen, who comprised the Farina Committee, Mr. McCabe and Mr. Zwerver, who were assigned temporary duties and responsibilities in the Society in 1978, and Dr. Turner and Dr. Bates. Even the testimony of various members of the personnel of the Society, including particularly Mrs. Harvey and Mr. Lovatt, supports my view.

The deficiencies I have mentioned contributed directly and indirectly to the tragedy of Kim. Mr. Lovatt, as Local Director of the Society, must bear responsibility for those deficiencies.

At the outset I wish to stress that I accept as correct the testimony which expressed commendation for Mr. Lovatt as a man and as a person genuinely interested in and concerned about the well-being of persons, especially children, in the community in which he lived. I am satisfied that he wanted to perform well as the Local Director of the Society. Simply put, he failed. Some matters which contributed to his failure were disclosed in the evidence upon the Inquiry. In other areas I sensed some underlying factors, not clearly expressed, if expressed at all, which may have contributed to his failure.

Mr. Lovatt's *curriculum vitae*, set forth in Schedule 1-E to the Report, discloses his educational qualifications, his employment experience and his involvement in community agencies and activities. Clearly he sought to improve himself so as to enable him to contribute to the benefit of the community he served. Even there his special interest in accounting is disclosed.

Mr. Lovatt became Acting Local Director of the Society in 1968. From Mr. Charko's testimony it would seem that Mr. Lovatt was not confirmed in that position until 1970 after the expiration of what might best be described as a probationary period of eighteen months. That probationary period was required by The Ministry of Community and Social Services, which hereinafter in this Chapter I shall call "the Ministry". Similarly the Minister of Consumer and Social Services shall be called the "Minister".

The probationary period apparently was required because Mr. Lovatt did not possess the qualifications necessary to enable or permit the Society to appoint him to be Local Director without the favourable opinion of the Minister pursuant to paragraph 11(b) of Regulation 86 made under The Child Welfare Act.

In due course Mr. Charko wrote a memorandum to the Director appointed for the purposes of The Child Welfare Act recommending Mr. Lovatt's appointment.

Mr. Charko spoke of Mr. Lovatt's concern about the requirement that he not be confirmed as Local Director of the Society until after that probationary period. Mr. Charko expressed the thought that a local director of a children's aid society appointed from among the personnel of that society might have some difficulty in gaining acceptance or recognition as local director from personnel who might consider the new appointee still to be one of them.

Mr. Charko said there was no statutory or regulatory provision establishing such probationary period, but it was a product of the policy of the Ministry.

Perhaps, so far as Mr. Lovatt was concerned, an unfortunate adjunct of that policy was that during the time he was merely Acting Local Director of the Society, he did not have authority to sign various rather routine documents which therefore had to be sent to the Ministry for signature by the Director appointed for the purposes of The Child Welfare Act.

That lack of qualification is one of the factors to which I alluded when, earlier in this Chapter, I wrote of my having sensed that there were underlying factors, not expressed or at least not clearly expressed, which may have contributed to Mr. Lovatt's failure.

Dr. Turner spoke of Mrs. Harvey's impressive qualifications. He expressed some doubt as to the current validity of her qualifications, but he said she was perhaps the most highly qualified person who, as a social worker, was involved in Kim's case.

I sense, without proof or even direct testimony, that Mr. Lovatt, with his own limited qualifications and his own reserved manner, stood somewhat in awe of Mrs. Harvey with her apparently superior qualifications and her dominant manner. That may have been an unexpressed reason for Mr. Lovatt's virtual abdication of responsibility and authority and assignment of essentially final authority for the management of cases in the Society to Mrs. Harvey while he busied himself with administrative, fiscal and budgetary matters and even more mundane physical tasks.

As one reviews Mr. Lovatt's *curriculum vitae* it would seem that Mr. Lovatt's appointment as Local Director of the Society was mainly because of his long service to the Society in different capacities from 1959. No testimony indicated that the Society looked beyond its own personnel to fill the position. Thus, it might be said that, for his purposes, Mr. Lovatt was in the right place at the right time.

There was no testimony to indicate what criteria, if indeed there were any such criteria, were applied by Mr. Charko in determining that he would recommend Mr. Lovatt's appointment as Local Director of the Society and by the Minister in determining that he would accept and act upon that recommendation.

It may be that the apparent absence of appropriate criteria for use by Mr. Charko and the Minister in connection with the appointment of local directors of children's aid societies contributed to the placing of one such as Mr. Lovatt in such a responsible position.

The absence of any effective ongoing assessment by the Ministry of Mr. Lovatt's performance of his duties after his appointment as Local Director of the Society certainly contributed to the sad state of the Society as revealed in 1978.

Dr. Turner's testimony as to the need for social workers to keep their qualifications current in the light of developments in the practice of social work raises a query which flows from that absence of information as to the criteria used by the Minister and Mr. Charko.

Mr. Lovatt was recommended for appointment as Local Director of the Society in 1970. Even apart from any question as to his qualifications for the position in 1970 there was absolutely no testimony to indicate that at any time thereafter he acquired or maintained a standard of knowledge and expertise sufficient for the adequate fulfillment of the duties and obligations of the position in the succeeding years.

From his own testimony as to his activities I would tend to believe that, as he became more and more engrossed in the purely administrative facets of the administration of the Society, he progressively became less and less aware of the current practices in social work.

I am unable to identify which was cause and which was effect. That is, I do not know if he retreated to the administrative tasks because he recognized his limitations in the performance of other aspects of his position or if his involvement in the administrative tasks prevented him from maintaining a satisfactory standard of qualification to perform the other duties.

Mr. Lovatt was aware of the terminology of section 4(1) of *The Child Welfare Act* which defines the responsibilities of a local director of a children's aid society. In his testimony he set forth a number of descriptive headings of the work he did on a typical day in 1975, 1976, or 1977 and he assigned to each a figure representing the percentage of the whole of his work day devoted thereto. In tabular form that testimony is reproduced as follows:

Correspondence with Ministry and agencies, including Ontario Association of Children's Aid Societies	15%
Finance including preparation of budget and supervision of expenditures by staff	15%
Personnel matters, hiring, firing, resolution of problems between workers and supervisors, meetings of Personnel Committee and negotiations with Staff Association	10%
Meetings of Board of Directors and Committees of Board, including preparation and collation of statistics and reports	10%
Consultative meetings with supervisors and other staff, including questions of case handling	10%

Meetings with managerial staff including supervisors and office manager	10%
Personal court work in respect of unmarried parents	5%
Direct work with clients	5%
Planning development of the Society, use of personnel	5%
Inter-relationship with other children's aid societies including regional meetings of local directors	5%
Community work	5%
Miscellaneous	5%

He said that a majority of his time sheets kept for certain parts of the year showed that he worked more than 170 hours per month, exclusive of evening work related to but not part of the Society's own work, whereas the average should have been about 132 hours. Without any details of the amount of related evening work, it would seem to me that 170 hours per month, by itself, is not a particularly gruelling work schedule for the local director of a children's aid society.

Mr. Lovatt said that the amount of time which he spent in relation to the Society's budget had increased tremendously, as had his time spent in court.

He described 1976 as the worst year he had experienced insofar as budget preparation and financial control were concerned. That was because of fiscal restraints imposed upon the Society through the Ministry.

In another part of his testimony Mr. Lovatt described his activities on "a typical day in the office." He did not suggest it was the sort of activity which occurred daily or even regularly, but he did say it was indicative of the kind of things that could and did happen.

Were it not for the tragic events which led to this Inquiry some of Mr. Lovatt's testimony would promote chuckles as one envisaged him doing some of the things he recorded. They were the more mundane, physical tasks I mentioned earlier. At the relevant time he was responsible for the administration of the Society with an annual budget of over $700,000.00, with a staff of about seventeen social workers, including the supervisors, and six clerical workers and with about fifty volunteers.

His typical day began at 9:05 a.m. with the report that a ward of the Society had run away, apparently from a group home. He said he was involved in this because "it required contact with another agency" which wanted to deal with him and not a member of the Society's staff. Presumably that other agency was the police who, he said, had already been informed.

The validity of that stated reason for his personal involvement escapes me when I consider the testimony as to the value of or need for each social worker to develop relationships with workers in other agencies, preferably on an individual basis to develop confidence and understanding each with the other.

If there was validity for the reason given by Mr. Lovatt it should have raised some question in his own mind as to how members of the staff of the Society were performing their duties. There was no testimony that Mr. Lovatt was at all disturbed by what would seem to be an expression by others of a lack of confidence in the ability of the staff of the Society. Indeed Mr. Lovatt seemed to regard all of this as some sort of re-assurance of his own importance and ability.

For my part, I think it is a sad commentary upon the Society and upon Mr. Lovatt, as its Local Director, that the Society's worker responsible for the management of that particular ward or group home was not accorded the courtesy or confidence of the other agency. Mr. Lovatt abetted that unfortunate situation.

At 9:20 a.m. he spoke with the foster parents of a ward of the Society. They wanted his approval of an unusual expenditure and called him because he was known to be "controlling the Agency's finances". Again, in the absence of testimony that the Society's worker involved with the management of that ward's case had been approached by the foster parents about the matter and had refused their request, I doubt the validity of the need for Mr. Lovatt to have become involved.

Further it is a bit surprising to me that the testimony did not indicate that Mr. Lovatt was at all interested in speaking with and obtaining the views of the Society's worker and his or her supervisor before dealing with the request by the foster parents.

The next item is the first to raise a tentative chuckle. Mr. Lovatt did laugh as he spoke of it. At 9:40 a.m. Mr. Lovatt carried a typewriter downstairs because a volunteer would be using it. Such a task, so minor, both in time involved and importance of subject matter, should not merit mention. He said he had to move the typewriter because often he was the only male in the office and funds were not available to enable the employment of anyone for that purpose.

In the same vein and for the same reasons, at 9:50 a.m. he helped a "foster home finder" load a crib into the Society's station wagon. He said only three or four of the Society's volunteers were male, but the Society moved a lot of furniture among its foster homes and its office.

Assuming an eight hour work day, which is longer than what his time sheets indicate apart from "evening work", those two menial tasks consumed more than 4% of that day. That would seem to be an entirely disproportionate allocation of the time of the Local Director of the Society.

Then at 10:00 a.m. Mr. Lovatt spoke with a Supervisor and one of the Society's workers about a problem in a group home. The Supervisor had dealt with the matter, but Mr. Lovatt wanted to impress the worker with the importance of the matter.

There was no testimony to indicate that the Supervisor had not handled the matter appropriately.

Nor was there testimony to indicate that the worker required any comment from Mr. Lovatt to ensure that the importance of the matter was recognized.

At 10:30 a.m. Mr. Lovatt received a telephone call from the Probation Services about a juvenile who might be placed in the care of the Society by a court. That arose from an amendment of The Training Schools Act which resulted in many juveniles being placed in the care of children's aid societies rather than elsewhere.

At 10:40 a.m. he began to deal with correspondence.

He could not have done much about the correspondence because, at 10:45 a.m., a Supervisor spoke to him about the earlier request that day by foster parents for an unusual expenditure. Again I note the apparently inappropriate sequence of approaches to Mr. Lovatt.

At 11:00 a.m. the run-away ward had been apprehended in a city some distance away. An escort was required to return the child to the Society. There was discussion as to the appropriateness of a volunteer performing that duty. The suggestion was rejected. A worker was assigned.

Again, it seems to me that any question of the possible role of a volunteer in such an instance should have been resolved earlier as a matter of general policy of the Society.

No reason was given for Mr. Lovatt's personal involvement. There was no suggestion that the Supervisor and social worker involved in the case could not have made arrangements for any necessary escort. It was an example of the recurring theme that there were no appropriate codes of policies and procedures.

At 11:30 a.m. Mr. Lovatt "hastily" prepared a report for a luncheon meeting. He attended the meeting from 12 until 1:30 p.m. Such meetings were usually with members of the Board of Directors and were usually held in the Society's offices.

From 1:35 until 2:30 p.m. he "[tried] to cope with correspondence."

At 2:30 p.m. he began to try to arrange group home placement for the juvenile mentioned earlier by the Probation Service and who had been brought to the Society's office. Mr. Lovatt said he was involved because "the Local Director has more influence than a regular worker."

Again I query the validity of that reason in the absence of any testimony to suggest that "a regular worker" had tried and failed and his or her Supervisor was unable to resolve the matter. If Mr. Lovatt became personally involved in the first instance, he deprived the "regular worker" of an opportunity to develop the community network which, the testimony of experts satisfies me, is necessary to the adequate and successful functioning of a social worker. If the regular worker and Supervisor were unable to resolve the matter, it might have indicated that those persons required some guidance in the performance of their duties.

That particular activity by Mr. Lovatt might have involved telephone calls to municipalities some distance from Sarnia as well as local calls.

At 3:10 a member of the Board of Directors visited with Mr. Lovatt and discussed the affairs of the Society. Such visits and discussions were often impromptu and unannounced. He cited them as examples of his open-door-policy and availability to all.

At 4:15 p.m. Mr. Lovatt tried to finish dealing with correspondence. He noted the annoyance of the Society's office secretary because the hour was late and some matters were "quite urgent."

The next item tends to raise another chuckle when coupled with one he mentioned a bit later. Mr. Lovatt said that at 4:45 p.m. the Society's station wagon had "broken down again" and required service. He said he was involved because he "dealt with the running of the car fleet after [the] Society's former office manager died." The station wagon was an older vehicle. It was the only vehicle operated by the Society. One vehicle hardly constitutes a fleet.

He gave no reason for the inability of the current office manager of the Society to perform the same duties as were performed by her predecessor beyond saying "there was no one else able to do it." I am not satisfied as to the validity of the reason given for Mr. Lovatt's personal involvement.

From my assessment of members of the staff of the Society who testified and from the testimony of Mr. McCabe and Mr. Zwerver as to the competence of at least some of the clerical staff of the Society, I am satisfied that Mr. Lovatt assumed the task of managing the "fleet" voluntarily and unnecesssarily. He might better have left management of the "fleet" to someone else while he dealt with urgent correspondence.

He said that in managing this part of his duties he often asked his wife for assistance "in moving the car about."

At 4:47 p.m. Mr. Lovatt began to check statistics for the month and to prepare his monthly report for the meeting of the Board of Directors of the Society.

At 6:20 p.m. he left for home in the Society's station wagon, followed by his wife driving their personal vehicle so as to drive him from the service station where he would leave the station wagon.

At 6:40 p.m. he received a telephone call at his home from the police who had misplaced the Society's duty worker roster.

Mr. Lovatt took a message from the police and then passed it to the appropriate worker on the Society's staff. One can only wonder why he would not simply have given that worker's name and telephone number to the police. There did not appear to have been any reason for Mr. Lovatt to have done more than that.

Then from 7:00 p.m. until 11:30 p.m. he attended the meeting of the Board of Directors. I presume it was then that he presented the report he began to prepare at 4:47 p.m.

He acknowledged that the Board of Directors of the Society relied heavily upon him during their consideration and discussion of the various matters dealt with at meetings of the Board of Directors.

All of that conveys to me a state of flurrying disorganization. Mr. Lovatt was involved in picayune details which could easily and appropriately have been handled by others, whether they be social workers or clerical employees of the Society.

What I note particularly is that none of that day appears to have been devoted to any major broad concerns of the Society or to a consideration of development of policies and procedures or even the budgetary and fiscal problems of the Society.

The proverbial molehills received attention while the mountains remained unattended.

I note also that it was 11:30 a.m. before be began to prepare a report for a meeting with members of the Board of Directors which began at twelve noon. Even he acknowledged that it was prepared in haste. I would wonder just how thorough any report prepared under those conditions could be.

In the same vein I note it was not until 4:47 p.m. that Mr. Lovatt began to check material and to prepare his monthly report to the Board of Directors. I gather the meeting at which the report was to be presented began at 7:00 p.m. Mr. Lovatt's secretary had been showing annoyance at 4:15 p.m. because he was only then dealing with some "quite urgent" correspondence. How much more annoyed would the secretary be if asked to type and perhaps duplicate the monthly report which he began to prepare at some time after 4:47 p.m.

And again, how thorough, complete and accurate could a report prepared under such conditions be?

It would seem that Mr. Lovatt was not well organized. He dealt with minor matters which others could have handled, but left preparation of his own reports to the Board of Directors until virtually the last minute and left "quite urgent" correspondence until 4:15 p.m. which too was virtually the last minute.

All of this sort of testimony by Mr. Lovatt is placed in an appropriate perspective when reviewed in conjunction with the later testimony of Harry Zwerver and Mr. Zwerver's earlier reports to the Board of Directors.

Mr. Zwerver's *curriculum vitae* forms part of Schedule 1-E to this Report. He was well qualified and articulate. On March 7, 1978 he was appointed as Special Field Consultant of the Ministry responsible for the operation of the Society. He began his duties on March 13, 1978. In that arrangement Mr. Lovatt remained as Local Director of the Society, but his reporting relationship was to Mr. Zwerver who was responsible for the overall administration of the Society.

Mr. Zwerver was also required to assess the Society's operations, particularly in relationship to some areas of service that required prompt attention.

Mr. Zwerver's initial impression was that the Society was in a state of confusion. He recognized, I think appropriately, that some of the confusion arose from concerns engendered by the then recently publicized developments in relationship to Kim's case.

He concluded that the operations of the Society were not then satisfactory. He attributed that condition in part to "inadequate procedures." He described some of the Society's procedures as being "seriously inadequate". He said confusion within the Society contributed to the unsatisfactory condition.

As requested by the Board of Directors of the Society he made a report to that Board on April 11, 1978. A copy of his written report was produced as an exhibit upon the Inquiry and is reproduced as Schedule 2-V to this Report.

That report is not entirely and solely referrable to Mr. Lovatt, but, particularly when considered in conjunction with the reports of the Farina Committee, it gives a picture of shocking inadequacy and disorganization of which Mr. Lovatt, as Local Director of the Society, should have been aware. By the same token he should have done something about it. He did nothing. He must bear the responsibility.

That is all the more so because Mr. Lovatt himself was a part of the inadequacy and disorganization.

Mr. Zwerver's general observation was that there were members of the staff of the Society whose knowledge of The Child Welfare Act and the Regulations made thereunder was inadequate. There were practices and procedures which did not meet the statutory and regulatory requirements.

Mr. Zwerver said that Mr. Lovatt acknowledged to him that members of the staff of the Society did have various levels of knowledge of the legislation and of the Society's function. That is understandable. But Mr. Zwerver added that he told Mr. Lovatt that the level of such knowledge possessed by some of the staff was inadequate. He said Mr. Lovatt agreed with him. That is not acceptable. He should not have permitted any member of the staff to maintain an unsatisfactory level of knowledge. There was no testimony that Mr. Lovatt had taken any steps to ensure that that unsatisfactory situation was corrected.

It would seem that rather than moving a typewriter, loading a crib, driving a station wagon in for service and doing some of the many unimportant things Mr. Lovatt described in his testimony, he might more appropriately and profitably for the Society and those whom it served, particularly in this context, Kim, devoted some of his efforts to ensuring that the Society had appropriate policies and procedures and that all members of its staff obtained and maintained an adequate knowledge thereof and of the applicable legislation and regulations.

Mr. Zwerver said that problem was compounded by the almost total lack of up-to-date written policies and procedures. When asked for material upon the policies and procedures of the Society, Mr. Lovatt was able to deliver to Mr. Zwerver only two short documents. They are reproduced in Schedule 2-L and 2-M to this Report and were commented upon by members of the Farina Committee in their reports and testimony upon the Inquiry.

There was testimony upon the Inquiry to the effect that many children's aid societies in Ontario did not have extensive documents setting forth policies and procedures, but they functioned well. That they did so is probably because of particular circumstances, perhaps of leadership or supervision or of personnel, which did not exist in the Society.

The Society clearly did not function well. The absence of written policies and procedures contributed to that unsatisfactory condition.

Mr. Lovatt in his testimony stated that he spent a considerable amount of time and energy upon budgetary and financial matters. He said that about fifteen per cent. of his time was devoted specifically to those matters. Other headings under which he listed the expenditure of his time would seem also to have some relationship thereto.

Some such would be correspondence, negotiations with the Staff Association, preparation and collation of statistics and reports, managerial meetings and planning. So too would some of the matters I have already mentioned.

The financial and budgetary concerns of the Society were directly affected by some of the matters mentioned by Mr. Zwerver. It must also be remembered that Mr. Zwerver advised Mr. Lovatt of the contents of his report as he prepared it for presentation to the Board of Directors of the Society and Mr. Lovatt did not disagree with Mr. Zwerver's observations and assessment of conditions within the Society.

Some portions of Mr. Zwerver's report to the Board of Directors of the Society and of his testimony upon the Inquiry were addressed specifically to consideration of the budgetary and fiscal affairs of the Society as he found them in March, 1978 and his recommendations for rectification of what he said were deficiencies therein.

Mr. Zwerver, in paragraph A.2 of his report, wrote that with budgetary pressures upon children's aid societies "service criteria tend to be determined by the workload pressures at intake." He wrote that the Society's staff were not clear as to the Society's service criteria and as to what cases should be or should not be opened for service and why. He recommended that the Society clarify its criteria for the provision of service.

In his testimony upon the Inquiry he enlarged upon that to say that there was "confusion about when cases were to be opened" and about priorities so that in some instances decisions were dictated by "pressure of time [and] the availability or non-availability of money." That led to inconsistency in decisions and, in some cases, to the failure of the Society to provide necessary services. That in turn led to others in the field being dissatisfied with the Society and its response to matters referred to the Society.

Later in his testimony Mr. Zwerver expanded his comments to say:

> "...it was obvious from our preliminary observations that there were no clear criteria for (a) opening cases and consequently as a result of that there were no clear criteria for statistically opening cases, so even if a Worker decided that a case ought to be opened for service it did not necessarily mean that at the point where activity began there was a statistical counting of that activity, either in terms of a case being opened so that there was a record of that activity, and consequently also the statistical count that could be used in discussions with the Ministry around staffing requirements for instance was also then not accurate, and there was a great deal of activity going on in the Agency that was not being counted by the staff and this created substantial disparity between the actual activity going on and what appeared to be going on on paper..."
>
> "...staff were feeling pressured and a great deal of that pressure was due to heavy work load but when one looked at the

> statistical information available related to their work load it appeared that there was not a heavy work load, and that became a serious concern."

Mr. Zwerver testified that he arranged for the establishment and maintenance of a proper statistical system to provide a more accurate count of the activities of the Society. Clerical staff operated that system as much as possible to relieve the pressure on the social worker staff and to leave them more time to serve their clients.

It was clear to me that that sort of matter directly affected the preparation of the Society's budget and the approval or rejection of that budget by the Ministry.

That was borne out by the testimony of Mr. Zwerver and Peter McCabe who, on May 22, 1978, was appointed to be interim Local Director of the Society.

As a result of the proper collation of material from the files of the Society, Mr. Zwerver and Mr. McCabe were able, in June, 1978, to satisfy the Ministry that the Society was understaffed and required more funds. The result was that the estimated expenditures of the Society for 1978 approved by the Ministry were in the sum of $848,000.00. Mr. Lovatt had earlier presented for approval a budget for 1978 in the amount of about $821,500.00 and the Ministry was prepared to approve a budget in the amount of only $725,000.00.

Mr. Lovatt, as Local Director, must bear responsibility for all those deficiencies noted by Mr. Zwerver and Mr. McCabe.

Even more distressing to me, as I place that responsibility on Mr. Lovatt, is to note that he apparently was aware of the problem, but would not or could not face up to it and resolve it. Mr. Zwerver testified in part:

> "We did get into substantial discussions before Mr. Lovatt left regarding the method of counting things, when cases were opened, how they were opened, what was legitimate

> case activity, how legitimate case activity could be counted and he really said that he was looking to me to develop a better way of counting things out of my particular orientation to hopefully be able to support the arguments that he felt he'd been trying to make to get additional staff in the past and, you know, as it turned out over the course of the next four or five months and I don't think this is all new business that's coming into the Children's Aid Society. We were able to increase the volumes very substantially, at least the numbers reflected I think the volumes in a very different way and consequently when Mr. McCabe and I did go to the Ministry to request additional funds for the Society, there was really no question that there was a need and the need was responded to by the Ministry and they did approve the final submission of the budget based on adequate data."

The important words in that extract are "based on adequate data." Mr. Zwerver stressed that without information from the files of the Society to support the budget which Mr. McCabe and he submitted the approval of that budget would not have been obtained. I accept that testimony.

I am satisfied that Mr. Lovatt was sincere and did devote a lot of effort and time to the financial and budgetary matters of the Society. The time and effort so spent by him were not matched by the results. He was ineffective in those matters and, it seems, he knew it, but would not ask for assistance therein. Some of the problems were of his own making because of the state of the organization, administration and operation of the Society, for all of which he, as Local Director, was responsible.

In his summary of the allocation of his own time Mr. Lovatt said he spent about ten per cent. of his time on personnel matters. Other categories of work to which he devoted time would appear to include some elements referrable to personnel matters. He spoke of ten per cent. of his time being devoted to consultative meetings with Supervisors and other staff, another ten per cent. on meetings with managerial staff and another five per cent. on planning development of the Society and use of its personnel.

Earlier in this Chapter I have set out some comments upon the deficiencies in the knowledge of at least some members of the staff. Mr. Zwerver in his report to the Board of Directors of the Society made some general comment upon this and enlarged upon it in his testimony upon the Inquiry.

In his report Mr. Zwerver wrote:

> "Generally, there appears to be a very basic lack of knowledge about the Child Welfare Act and its Regulations. The violations of the requirements of the Act regarding child protection services, including the use and requirements of Court are very serious. This is compounded by the almost total lack of written policies and procedures."

In his oral testimony Mr. Zwerver said that the inadequate knowledge of the legislation possessed by some members of the staff resulted in there being practices and procedures within the Society which did not satisfy the requirements of the legislation.

In his report he recommended that the Society initiate a basic training or retraining programme for all of its social workers and support staff. He also recommended development of written policy and procedure manuals for the Family Services Department.

In his testimony Mr. Zwerver said that on the basis of statistics available from the Society when he arrived in March, 1978 it appeared that there was an adequate number of staff persons to meet the work load requirements. But, at the same time, it was apparent to him that the staff were working much harder than the statistics indicated. The staff were complaining of "phenomenal work load pressures."

He testified that when a proper statistical system was established

> "it became apparent very quickly that the staffing of the Society was less than it ought to be."

Mr. Zwerver went on in his testimony as to the adequacy of the staff of the Society to say:

> "The other issue related to staffing was that the staff were really a mixed bag of people, very few with formal social work training, either at a graduate or undergraduate level, people with a great deal of experience, people with very little experience."

He said Mr. Lovatt had expressed to him concern about the quality of the staff which Mr. Lovatt had been able to hire in the past. Mr. Zwerver said that led him to fear that he, himself, might then have some difficulty in hiring persons to fill any of the positions and to obtain a better balanced staff in 1978.

In fact, when Mr. McCabe advertised the vacancies and sought applications there was a "flood of applications". While Mr. Zwerver was not directly involved in the employment of any of the applicants, he saw several of the applications and felt the applicants were "well qualified social work staff with a combination of training and experience in child welfare" or were recent graduates of schools of social work with formal training, but not a great deal of experience.

Mr. Zwerver did not appear to accept as accurate Mr. Lovatt's testimony that the Society experienced difficulty in hiring competent staff because of its salary structure and the absence of a university. He said that some social workers prefer to work in smaller communities. He acknowledged that conditions may have changed between 1975 and 1978, but I think that is rather immaterial since his comments were based on his observations in March and subsequent months in 1978 and Mr. Lovatt's comments at that time.

Mr. Zwerver expressed the opinion that experienced social workers contemplating seeking employment with a children's aid society would be interested in a number of factors. They would be concerned about the support available to them and about the reputation of the society. In a society similar in size to the Society, they would be concerned about the abilities of the local director and supervisors to provide support, training and opportunity to the staff to acquire skills and knowledge.

That opinion is of interest because later in his testimony Mr. Zwerver testified that, over a period of years before becoming involved in any way with the Society, he had heard comments about the Society. The comments were to the effect that all was not well with the Society. The comments were made in general conversation at meetings of persons professionally engaged in social work.

I would infer from Mr. Zwerver's comments that the reputation of the Society while Mr. Lovatt was the Local Director was not high and that that, more than the location of the Society or its salary structure, was a factor in any problem Mr. Lovatt may have encountered in attracting adequate staff.

However, in a final analysis of any problem relevant to the quality of the staff, suffice it to say that there was no testimony upon the Inquiry to indicate that, until Mr. Zwerver arrived upon the scene in March, 1978, Mr. Lovatt acknowledged or stated that difficulty he then claimed. There was no testimony that he sought assistance from anyone to improve the quality of the Society's staff. He did seek authority to enlarge the staff and the Ministry, represented by Mr. Mainville, acceded to that request in 1975. There was no testimony that Mr. Lovatt instituted or even sought to institute any programme to improve the knowledge or skills of the Society's staff.

Mr. Lovatt had sought to further increase the number of the staff of the Society prior to 1978. His efforts were in vain because, despite all his devotion to figures and statistics, he was unable to prepare a submission which supported his position.

The weakness of Mr. Lovatt's effort to increase the staff is demonstrated by the success of the careful and properly documented presentation by

Mr. Zwerver and Mr. McCabe in 1978. Their material demonstrated the validity of their position. Their submission succeeded where Mr. Lovatt's failed. Presumably his too might have succeeded if it were properly prepared, supported by material and presented.

In amelioration of the seeming harshness of what I have just written, I acknowledge that by March 1978, perhaps as much as a result of Kim's death as anything else, the situation surrounding the Society may have changed. Nonetheless, regardless of any change of circumstances, I accept Mr. Zwerver's statement that the submission in 1978 succeeded because it was supported by a properly prepared statistical base which was not earlier available. Thus, I am satisfied Mr. Lovatt's submission failed because it lacked an adequate basis in the records, files and statistics maintained by the Society.

Mr. Lovatt, as Local Director, and especially because of his self-proclaimed interest in and devotion of time and effort to such matters, must bear personal responsibility for the deficiencies in the quality and quantity of the staff and of the statistical base relied on by him to support his request for change.

Mr. Lovatt said he devoted about ten per cent. of his time to meetings of the Board of Directors and of Committees of that Board. Again I would think that some other areas to which he devoted time would involve the function of the Board of Directors and its Committees.

In his report to the Board of Directors, under the heading "Board", Mr. Zwerver set forth his comment upon and recommendations in respect of the function and organization of the Board of Directors in relation to the operation of the Society. Some of his testimony upon the Inquiry was similarly directed.

There were two recommendations. One was that a "functioning" Executive Committee be established. The other was that an "active" Services Committee be established. His choice of adjectives is interesting. Those committees may have existed in theory or on paper, but, in his view, they were not "functioning" or "active."

In his testimony Mr. Zwerver expressed his concern that the Board of Directors of the Society did not have a "functioning" Executive Committee as required by the legislation. I presume his reference was to sub-sections 7 and 8 of section 7 of The Child Welfare Act.

He said the absence of a functioning Services Committee was also a cause of concern to him.

He referred to the manual prepared in 1975 by the Ontario Association of Children's Aid Societies entitled "A Working Manual for Board Members of Children's Aid Societies". Based on a comment in that manual he expressed the opinion that any committee of the Board of Directors would have only an advisory function unless specific authority were delegated to it by the Board of Directors. I share his opinion.

In the case of the Society, the by-laws delegated specific authority to the Executive Committee, but to no other committee. Mr. Zwerver stated his opinion that a committee's function is to examine some aspect of a society's operation and, on the basis of the results of that examination, to advise the members of the society's staff in relation to what is within their ambit of operation and to advise the board of directors if the recommendation relates to the policy of the society or is otherwise beyond the ambit of the staff's authority.

Mr. Zwerver said that the absence of meetings of an Executive Committee and thus the lack of preparation for meetings of the Board of Directors contributed to long meetings of the Board of Directors of the Society and to a deficiency of focus in the agenda of such meetings.

He said his recommendation as to the Executive Committee was accepted and acted upon by the Board of Directors of the Society.

He said that similarly a services committee is an essential part of the operation of any children's aid society. Its function is to keep the board of directors informed about service demands and generally to assist the board and the senior staff in relation to any problems surrounding the provision of the society's services.

In the case of the Society there was a Services Committee, but it met infrequently and its activities were not well focussed. Similarly, in Mr. Zwerver's opinion, members of the Board of Directors of the Society did not possess adequate knowledge of the services provided by the Society.

Again he said his recommendation as to the Services Committee was accepted and acted upon by the Board of Directors of the Society. That Committee was engaged in preparing the policy and practice manuals recommended by Mr. Zwerver. They also provided support to senior staff persons in their duties.

Thus, though Mr. Lovatt purported to devote time to the function of the Board of Directors and its committees, it is apparent that he did not achieve adequate results.

The evidence upon the Inquiry as to his communication to the Board of Directors with reference to Kim's case after it became a matter of public knowledge and the evidence as to his earlier decision not to communicate with the Board of Directors about the case combine to show an abysmal record of fulfillment of a local director's responsibilities and duties. I deal with this more fully elsewhere, but it must be borne in mind in relation to Mr. Lovatt's testimony as to his time spent on matters involving the Board of Directors and their reliance upon him as Local Director. He acknowledged that reliance.

Mr. Lovatt said that he spent about five per cent. of his time with attendance in court particularly in connection with one area of the Society's service. He said:

> "My method had been to always retain some personal contact with the court, so that I knew what was going on in the system

> between the Children's Aid Society and the court..."

That interest and desire by Mr. Lovatt was laudable. However again it was ineffective.

Kim's case by itself may not have been sufficient to support that comment by me, but Mr. Zwerver's testimony provides sufficient re-inforcement for my opinion.

Mr. Zwerver testified that when he first came to the Society he sat in court to observe most of the proceedings. He wanted to assess the level of the knowledge which the staff of the Society had in relation to court procedure and the presentation of evidence. He wanted also to have a basis for discussion with the provincial court judge then sitting in court.

He said that on the whole he was not satisfied with the manner in which the staff of the Society performed their duties in court. Especially when solicitors appeared to oppose the Society the Society sought adjournments because the staff was not prepared for the hearings and because essential evidence had not been prepared. In other instances assessments which had been ordered by the Judge were not prepared in time. In other cases there was confusion as to when matters should be brought to court; they were brought on much later than they should have been. In other cases information required by the court was presented late. Almost all of those comments can be made of the handling of Kim's case by the Society in court.

Mr. Zwerver did speak with His Honour Judge David F. Kent who had succeeded Judge Nighswander. He said that Judge Kent's

> "comments to me certainly indicated that he felt that the lack of knowledge on the part of the staff was really quite abominable."

If Mr. Lovatt had been effective in his purported desire to know "what was going on in the system" between the Society and the court he would have been aware of Judge Kent's view. Judge Nighswander had not sat in the Court in Sarnia and the County of Lambton since September, 1976, about eighteen months before Judge Kent expressed himself so bluntly to Mr. Zwerver.

Mr. Lovatt in his testimony said he spent about ten per cent. of his time on meetings with managerial staff, including the supervisors and the office manager. Whatever might have been done at such meetings might also have included matters which Mr. Lovatt placed in other categories in his estimate apportioning his time. The category of planning development of the society and use of personnel might be one such category. Consultative meetings with supervisors and other staff, including questions of case handling, might be another.

Despite all of such meetings and planning, all of the confused disarray noted by Mr. Zwerver and members of the Farina Committee was permitted to come about and to continue. It was another example of Mr. Lovatt's ineffectiveness.

The absence of adequate policies and procedures was noted by the Farina Committee and by Mr. Zwerver. The two documents presented by Mr. Lovatt to the Farina Committee and to Mr. Zwerver as the policies and practices of the Society are reproduced as Schedule 2-L and 2-M to this Report. Mr. Zwerver described the situation as "the almost total lack of up-to-date written policies and procedures." The members of the Farina Committee were similarly critical. The comments of Mr. Zwerver and of the Farina Committee are well-founded.

Mr. Lovatt, as Local Director, must bear the responsibility for the inadequate policies and procedures which did exist and for the absence of others.

Another example of Mr. Lovatt's lack of administrative skills is one which, if it were mentioned under less tragic circumstances, would have almost comic characteristics. Despite all of Mr. Lovatt's devotion of time to budget, finance, administration and management meetings, and despite the surplus of about $12,000.00 at the end of 1977, the supplies of office materials for use by the Society's staff were completely inadequate when Mr. Zwerver arrived in March, 1978.

Mr. Zwerver described the situation and Mr. Lovatt's explanation as follows:

> "Q. And I think you mentioned briefly yesterday that you found that there was a lack of office supplies in the Agency.
>
> A. Yes, some office supplies.
>
> Q. Would you like to be specific about that, please?
>
> A. There was no writing equipment, such as pens and pencils; there was no writing pads, people were using the back of blank cheques to write memos to each other; no notebook paper was provided for staff to do case notes, they also had no binders to keep case notes in, and that was something that was expressed as a need and as a concern by the staff when we arrived, and we basically - what we did was we made sure that those supplies were available to staff because they're fairly basic.
>
> Q. Yes. Why were the supplies not available, do you know?
>
> A. Mr. Lovatt said that the Agency couldn't afford to buy them.
>
> Q. From what you observed would that have been correct?
>
> A. Well, the Society had a surplus of $12,000 in 1977. I did note yesterday that we didn't think enough money had been allocated in the area of office supplies in the '78 submission. I felt that, you know, basic things as the ones I have described were important to the operation of the Society and certainly I would not have thought that the Ministry in looking at a budget would be particularly concerned about the $200 involved in buying pens and paper.
>
> Q. I would think not. As far as the surplus was concerned no matter in what

> area the surplus had occurred could it not have been used in other areas where there perhaps wasn't enough money to go around?
>
> A. Well, my understanding of the Ministry's budgetting procedure is that once they approve the budget, it's line by line approval but then it becomes a global budget and in fact the responsibility for the allocation of those funds is left to the discretion of the local Children's Aid Society so certainly in that sense those monies could have been used for other purposes.
>
> Q. There was no reason at all why they couldn't have been used for office supplies?
>
> A. I would think not."

Mr. Lovatt, as Local Director, must bear responsibility for that. His explanation that the Society could not afford such supplies does not merit comment beyond Mr. Zwerver's remarks which I set forth above. There simply was no reason for the lack of such supplies.

Another portion of Mr. Zwerver's report and testimony demonstrates further the ineffectiveness of so much of Mr. Lovatt's expenditure of time upon managerial and consultative and planning meetings.

Mr. Zwerver in his report noted the absence of structured case planning conferences except for discussions within the individual service units. He elaborated upon that when he testified upon the Inquiry. He said there were no structured case planning conferences held in the Society for the purpose of making certain basic decisions in cases. In his report he set forth seven stages or areas in respect of which case planning conferences should be held in all cases.

In testimony expressing views similar to those expressed by other well-qualified witnesses, he said that more than the individual worker engaged upon a case should be involved in making such decisions.

In his report and testimony he set forth recommendations for the establishment of a system of structured case planning conferences of appropriate members of the Society's staff and collateral persons to ensure proper planning of each case. He felt the Local Director and Supervisors were responsible for ensuring that such conferences were held.

Mr. Lovatt, as Local Director, must bear responsibility for the absence of such case conferences.

Kim's case certainly was an example of one in which decisions were not the result of any conference. Apart from the meetings of some of the staff in May, 1976 to determine when Mrs. Harvey's decision to return Kim would be implemented, there were no case conferences in respect of Kim. There was no planning for her case. Even the meetings in May, 1976 were not case planning conferences in any real sense. They were circumscribed by Mrs. Harvey's prior decision that Kim would be returned to her home and by the limited number of persons who attended, some of whom felt further inhibited by the accepted dominant position of Mrs. Harvey and the Family Services Department within the Society.

Mr. Zwerver said there was a need to make such conferences a part of a formally endorsed administrative procedure within the Society.

Mr. Lovatt must bear responsibility for the absence of any such requirement during Kim's lifetime.

In his report Mr. Zwerver made no refernce to Kim's case, but he did include a portion entitled "The Investigation of Reports of Child Abuse or Neglect." In his testimony he said that portion was based on discussions he had with members of the staff of the Society. The discussions were about the practices and procedures in such matters, including referrals from other organizations in the community.

In his report he outlined the requirements of The Child Welfare Act and the Regulations made thereunder. He mentioned specifically the requirement under section 41 of that Act that certain information about children be reported to a children's aid society or Crown attorney. He spoke of the further obligation imposed upon the children's aid society receiving any such report to record it and to investigate it and to determine if the child mentioned in it is a child in need of protection. He also mentioned directives from the Child Welfare Branch of the Ministry reminding children's aid society personnel that a children's aid society cannot delegate its responsibilities to others and that its personnel must co-ordinate any plan for the treatment of any case of confirmed or suspected child abuse.

In his report was a short paragraph which must have disturbed those who read it in April, 1978. He wrote:

> "There have been cases noted in this Society where neglect and abuse have been reported or alleged and which were not investigated by CAS, or appear to have gone uninvestigated for long periods of time."

It would seem that, but for some fortunate circumstances, some of those cases might have had the same tragic conclusion as Kim's case.

That paragraph was followed by his six recommendations with reference to the management of reports and cases of child abuse.

In his testimony he said that in March, 1978 there were not in the Society any written established procedures to be followed in respect of such reports and cases. Kim's experience demonstrates that that same situation prevailed during her lifetime.

Mr. Zwerver said it was important to have such procedures reduced to writing. For them to be merely "understood" was not sufficient. Mrs. Harvey, in her testimony, while not addressing this aspect in particular, had suggested there was no need for written procedures because the staff of the Society were aware of what was required.

On the basis of the testimony as to the errors made in Kim's case as early as June 17, 1975 and Mr. Zwerver's testimony and that of the members of the Farina Committee, all as to their observations as to the adequacy of the Society, I am satisfied completely that Mr. Zwerver's view is correct and that Mrs. Harvey was in error.

I am satisfied that the absence or lack of appropriate policies and procedures was the result of Mr. Lovatt's inability or unwillingness to perform properly some very important parts of his duties as Local Director of the Society.

In Kim's case either the staff of the Society did not "understand" what was to be done in such a case or, if they did "understand" they did not do it. As Local Director, Mr. Lovatt was responsible in either instance.

Mr. Zwerver felt that it was important to have written material available for reference, especially in times of stress. He, and others too in their testimony, emphasized the stressful situations which arise in cases of child abuse.

He went on to say in his testimony that, by having the procedures in written form, the Society and its staff would achieve greater consistency in the management of such cases, in all of their various phases and aspects. He cited a number of areas that might raise questions in individual cases. They included acquisition and use of medical information, arrangements for medical examinations, involvement of parents, involvement of police, apprehension, use of non-ward agreements, applications to court, involvement of other persons or organizations in investigation or in treatment and preparation of documents, including reports.

Mr. Zwerver said that, while there were "pockets of knowledge" of appropriate procedures within the Society, he found, generally "a lack of understanding about how to handle child abuse cases."

He said that, after initial discussions with the staff of the Society, he was disturbed by the responses he received. He asked all members of the staff, who had been involved in any case in the Society in which child abuse had been a component, to furnish to him the basic information about those cases. He was interested in knowing whether each case had come initially to the Society as an allegation of abuse or serious neglect or whether abuse had been mentioned after the case was opened or whether abuse allegedly occurred while the child was in the care of the Society.

At another point in his testimony, while being examined with reference to the state of the files maintained by the Society, Mr. Zwerver expressed concern that there might have been other cases of child abuse in which the Society was not actively involved. The concluding sentence of the particular comment by Mr. Zwerver was:

> "The question was put to me by the Board of Directors in fact as to whether situations similar to the Kim Anne Popen case could occur, and at that point in time it being only about three weeks into my being there, I certainly could not guarantee them that it could not occur not having total knowledge of all of the cases obviously at that time."

In other areas of his testimony Mr. Zwerver referred to incidents which were mentioned to him during meetings or conversations with persons outside the Society. He mentioned specifically a meeting with the child abuse committee which was established with orientation about Sarnia General Hospital. The particular comment by Mr. Zwerver in his testimony was:

> "One of the things that I found interesting, and subsequently disturbing, was that the role of the Children's Aid Society was not spelled out in the written procedures that were being put forward by the hospital, and I raised that concern in the Child Abuse Committee meeting. There was great hesitancy to respond to my concern. What subsequently came out of our conversations were really several people in that room saying that the reason why it was not spelled out was because they did not feel that they could trust the Children's Aid Society to carry out their responsibilities, and that they wanted to use intermediaries to make sure that at least

> their responsibilities were being adequately carried out, and that they would then inform the Children's Aid Society of their actions. This comment was made by one of the medical people there and was also made by the representative of the Police Department who sits on that Committee. There was a great deal of anger expressed about what the Children's Aid did or did not do in cases where they felt they had referred a matter of alleged or actual child abuse."

In a subsequent response he tempered that comment to say that "anger" might not have been an appropriate word, but that certainly frustration was expressed. He said one person did say he was angry because of the reluctance of the Society to become involved in some cases in which he felt it was important that the Society be involved.

Mr. Zwerver spoke of one incident mentioned by a person at the meeting of the child abuse committee. It was stated that during the night a child was admitted to hospital, the police were involved and a telephone call was placed to the Society. It was alleged that the Society's worker responded to that call to say, during the telephone conversation, that there was no need for him to go over then and he would meet the others in the morning. The feeling of the others then was that that was not an appropriate response. Mr. Zwerver shared that opinion and spoke to the particular member of the Society's staff who had made that response and who then acknowledged to Mr. Zwerver that it was an error in judgement.

As Local Director Mr. Lovatt must bear the ultimate responsibility for all of that.

In any event Mr. Zwerver made several recommendations which are set out in his report. He then prepared a written statement of procedures which incorporated those recommendations. That statement was intended to be an interim document and it was later amended,

Mr. Zwerver's first recommendation was that all reports of alleged child abuse must be investigated immediately. The investigation must be by the Society which could not delegate any of its authority or responsibility to investigate to anyone other than the police. If another organization in the community had referred the matter to the Society, the Society might ask that organization to be involved with the Society, but the Society would retain a position of dominant authority and responsibility.

Mr. Zwerver emphasized that the Society bore the responsibility to act upon and to investigate every report to it of a possible or alleged incident of child abuse.

He said that he became aware of cases wherein, because of the provisions of section 41 of The Child Welfare Act, another organization had reported to the Society concern about physical injury to children, but, at the same time, had requested the Society not to investigate because the other organization had not yet completed its own investigation.

In his opinion it was not an acceptable practice for the Society to withhold its own investigation in such circumstances and for such reasons. He so advised the staff of the Society. The Society bore the responsibility to investigate, but might consult with the other organization to decide upon the method of investigation.

I infer from Mr. Zwerver's testimony that, prior to March, 1978, the Society or some members of its staff had acceded to such requests to withhold or delay investigation following reports to the Society of instances of suspected child abuse. Mr. Lovatt, as Local Director, was responsible for any such unacceptable practice which, I am satisfied, amounted to dereliction of the Society's statutory responsibilities.

Mr. Zwerver's second recommendation in this area was that the Society arrange for the immediate medical examination of any child mentioned in any report to the Society if the child was physically injured. In his view that was one of the Society's responsibilities.

He said in his testimony that in some instances members of the staff of the Society made judgements as to the severity of the child's injuries. I infer that such decisions were made without referral to a medical doctor and without medical examination. He said that in other instances the Society's staff "delegated the responsibility" for medical examination of the child to the child's parents or to another organization. I share the view, implicit in his comment, that such practices are inappropriate and do not fulfill the responsibilities placed upon the Society.

The next recommendation in this portion of Mr. Zwerver's report was that the police were to be advised of all cases of alleged sexual abuse and of cases of obvious injuries to children.

Mr. Zwerver's next recommendation was based on practices suggested by the Ministry. It was that in any case in which a child appeared to have been abused, the child should be apprehended by the Society and the case should then be heard in court. The child should not be admitted to the Society's care by means of a non-ward agreement. Mr. Zwerver was aware of at least one instance, in addition to Kim's, in which a child was obviously abused, but was taken into care pursuant to an agreement with the parents.

His next recommendation was that no child, who was in the care of the Society because of actual or suspected abuse, should be discharged from the Society's care without an appropriate case planning conference. He said that when he assumed his duties no specific procedures had been established for the convening of conferences to make decisions with respect to admission to or, especially, discharge from the care of the Society. Such decisions in the Society tended to be made by an individual member of the staff of the Society, perhaps in consultation with his or her immediate superior.

It would seem that even in March, 1978 the Society had not learned that lesson from the tragedy of its mismanagement of Kim's case.

Mr. Lovatt, as Local Director bears responsibility for that.

In Mr. Zwerver's opinion other persons should have been involved in such decisions as to the care of children by the Society. He suggested that in some cases the foster care worker and the Supervisor of that area of work should be involved. In some cases persons working with the families as representatives of other bodies in the community, such as public health nurses and teachers, might be involved in such decisions. These others would assist not only in the immediate decision, but also in forming a basis for case planning required after the child's discharge. Such planning might include consideration of levels and frequency of supervision, use of medical resources and use of other facilities and resources in the community.

The final recommendation in this portion of Mr. Zwerver's report in a sense flowed naturally from the others. It was that the Society prepare immediately a procedure to deal with cases of child abuse and to involve other community resources therein. Models for such a procedure were available.

Mr. Zwerver said that that recommendation had been acted upon. In his opinion the child abuse committee which was established in the County of Lambton could and should be involved in the decisions and planning he mentioned in this portion of his testimony.

Mr. Lovatt in his testimony had said that he spent about five per cent. of his time upon "community work done during working hours." From Mr. Zwerver's testimony it would seem that Mr. Lovatt's efforts at community work were another instance of lack of positive effectiveness. Other persons in the community were angry or frustrated because of the Society's actions or failures to act. There was no testimony that Mr. Lovatt was aware of that anger or frustration. There was no testimony to indicate that he did anything to correct the problems of the relationships between the Society and others. By dealing directly with some matters as he did during the typical day he described he gave validity to the complaints of others and so aggravated the problem.

Mr. Lovatt, as Local Director, is responsible for the deficiencies in these areas. He should have been aware of them either from within the Society or from the community beyond the Society. He did nothing to correct them. Either he was unaware of the deficiencies or he was unable or unwilling to correct them. In either case it would seem that this was yet another example of his lack of competence to be the Local Director of the Society.

None of the testimony upon the Inquiry led me to believe that any time devoted by Mr. Lovatt to any category of his duties was any more effectively applied than those I have examined so far in this Chapter.

On all of the testimony I am satisfied that in the early months of 1978, as well as during Kim's lifetime, the general administration and operation of the Society were not satisfactory. In my view they were deplorable.

Mr. Lovatt, at all times material to that observation, was the Local Director and had been so for several years. Therefore, he must bear the responsibility for the existence and continuance of such a condition.

That he was a person of good character and good intentions does not diminish his liability.

That he spent time and effort upon the affairs of the Society does not diminish his liability.

All of what I have written heretofore in this Chapter is of general application to Mr. Lovatt's position within the Society and his performance of the duties of that office. Fleeting reference has been made to Kim's case when the particular area being discussed seemed to have some special bearing upon it.

I now move to an examination of the impact of Mr. Lovatt's shortcomings upon Kim's case and specific instances of his shortcomings as demonstrated by the testimony relating directly to it.

Only in September, 1975 did Mr. Lovatt learn of the Society's involvement in Kim's life.

Police Constable Gander had visited the Society's offices on June 17, 1975 and reported the general tenor of the telephone call to the police on June 16, 1975.

I am satisfied that that report by Police Constable Gander then imposed upon the Society the responsibility to act and to investigate the matter immediately. That would involve investigation of the earlier instances of alleged injury to or medical treatment of Kim.

I am satisfied that the Society did make an initial response immediately, on June 17, 1975, but more was required. The personnel of the Society recognized that. However nothing more was done after June 17, 1975 until August 31, 1975 when another quite separate incident again brought Kim to the attention of the Society.

In my view the unsatisfactory administration and organization of the Society, including particularly the absence of clearly defined and enunciated practices and procedures, permitted the failure of the Society to act upon and to investigate in any way Kim's case between June 17, 1975 and August 31, 1975.

Mr. Lovatt, as Local Director of the Society, was responsible for the unsatisfactory administration and organization of the Society. Thus, with other members of the staff of the Society, he was responsible for the failure of the Society to act upon and to investigate Kim's case appropriately between June 17, 1975 and August 31, 1975.

In a sense, from June 17, 1975 to August 31, 1975, Mr. Lovatt was a victim of his own shortcomings. He sheltered in his office, he allowed Mrs. Harvey free rein and he permitted the unsatisfactory state of the Society to exist. That state was such that a case, unusual to the Society because it was one of alleged or suspected abuse and because it was, even on June 17, 1975, recognized as one of some complexity and severity, could lie unnoticed and unattended for two and one half months. For all practical purposes the only record of Kim's case within the Society was in the minds of some of the staff. The location of any writing about it was unknown. Even in 1978 the witnesses could do no more than guess as to where the writing prepared on June 17, 1975 had lain until September 2, 1975.

When events external to the Society again brought Kim to the attention of the Society on August 31, 1975, Mr. Lovatt was soon made aware of the more recent events.

His testimony was such that it leads me to believe that the case came to his attention only because it was going to involve an application to court. He did not indicate that he then was informed of the events of June 17, 1975 and the inexplicable absence of any further activity by the Society until August 31, 1975.

On September 8, 1975 he appeared in the Provincial Court (Family Division) of the County of Lambton, hereinafter in this Chapter usually called the "Court", on behalf of the Society to request an adjournment of the hearing of the Society's application for an order under The Child Welfare Act in respect of Kim.

The extent of Mr. Lovatt's knowledge of the case is not apparent from the transcript of the proceedings in the Court that day. He did say that the Society would eventually seek an order making Kim a ward of the Society for a period of six months.

In his testimony upon the Inquiry he said that throughout the fall of 1975 Mrs. Harvey kept him "aware in general of what was happening in this case." When asked if he read the file or relied on oral reports from Mrs. Harvey he replied:

> "The reports would be mostly from the Supervisor."

The frankness or accuracy of that response must be questioned. When one looks at the recording in the file of the Family Services Department of the Society it is clear that anything which happened after August 31, 1975 was not recorded until Mr. Carter made his one and only recording at the end of February, 1976. So really, through all of that time, there was nothing new recorded in that file. There were, during that period, several entries in the recording in the file of the Children's Services Department of the Society.

One must also wonder as to Mr. Lovatt's comprehension of what was involved in the case and, particularly, the charge against Kim's parents under section 40 of The Child Welfare Act. In his testimony he said:

> "...my understanding was that it was the father [Annals Popen] that was found guilty of damaging this child [Kim]."

He added that he was shocked by that finding because he:

> "...had kind of felt all along that any damage here might have been the result of the mother [Jennifer Popen]."

He acknowledged that that latter was really based on intuition

> "because at that time we did not know too much about the background of this girl [Jennifer Popen]."

That is a frank admission that, until after the hearing of the charge against Kim's parents and the hearing of the Society's application for wardship, the Society still lacked information which, I am satisfied, should have been sought in June, 1975 and again in September, 1975 and the succeeding months.

Mr. Lovatt must bear responsibility for its not having been sought. At least in February, 1976 he knew the Society did not have that information. There is no testimony to indicate that even then he exercised his authority and ordered Mrs. Harvey or anyone else to conduct the necessary investigation to obtain the necessary information.

Mr. Lovatt did not fulfill the duties of his office.

A further indication of Mr. Lovatt's inadequate comprehension of the case was his testimony that, in discussions with Mrs. Harvey after the Court's decision, it was decided that the Society would place its emphasis on Jennifer Popen rather than on Annals Popen "although the Court order had required us [the Society] to monitor the father's [Annals Popen] behaviour" with Alcoholics Anonymous and other agencies.

His phraseology indicates that that discussion may have occurred after Annals Popen was sentenced on March 29, 1976. The judgement given by Judge Nighswander on February 25, 1976 placed Kim in the care of the Society and the reasons for judgement contained the following:

> "I am definitely going to note that he must give evidence that he has done something [about his alcohol problem] and that it is succeeding, before the Court will permit the child to return to its parents."

A transcript of the proceedings when Annals Popen was sentenced on March 29, 1976 was not available, but the probation order then made required him to abstain from drinking alcoholic beverages and to take treatment for his alcoholism.

He then went on to say that Mrs. Harvey assured him that Jennifer Popen would be "monitored." He said that from then on "in a general fashion" he followed Kim's case "all the way through."

A further indication of Mr. Lovatt's lack of comprehension of what was involved in Kim's case was his testimony as to his belief that the Society was placed in a difficult position by the disposition of the charge against Jennifer Popen and Annals Popen. He said that, while Annals Popen's plea of guilty did not fool the Society, the situation was that if Annals Popen complied with the terms of the probation order the Society would have no basis to oppose any application for the return of Kim to her parents.

In the light of some of his other evidence that was an entirely hypothetical difficulty. He said that he understood that Jennifer Popen's behaviour too was improving greatly. That was based on reports to him of Jennifer Popen's and Annals Popen's attendance at the Parent Effectiveness

Training Course and of Mrs. Lo's visits to them and of their improved "marital situation".

Mr. Lovatt was another who was misled, perhaps by himself, as to the value of the Parent Effectivensss Training Course, the adequacy of Mrs. Harvey's supervision of Mrs. Lo and the sufficiency of Mrs. Lo's efforts.

Mr. Lovatt was aware that Jennifer Popen had "consulted" Dr. Curtin prior to imposition of sentence upon Annals Popen on March 29, 1976. He testified as follows:

> "The psychiatric report was, to my memory, was very bland, it didn't say that there was any great problem with this woman, it said that she was a poor communicator, that she had a poor background, it didn't detail the background, and it said that he couldn't make an opinion."

Mr. Lovatt was not specific as to what report he meant. The language he used leads me to believe he meant Dr. Curtin's report of March 19, 1976, supplemented by his earlier consultation note to Dr. Gamula following an interview with Jennifer Popen on October 22, 1975. I have discussed that report and note in Chapter IX. It certainly was not a positive statement in respect of Jennifer Popen. It expressed Dr. Curtin's inability to do more because of her unreliability. It would seem to me that Mr. Lovatt did not understand Dr. Curtin's report if he truly believed that Jennifer Popen's unreliability was not "any great problem" in the circumstances surrounding Kim.

There was no testimony that Mr. Lovatt, even when faced with the concerns expressed by Dr. Curtin in those documents and his statement of inability to do more without information from other sources or by other means, took any steps to ensure that efforts were made to pursue the matter.

It was another instance of Mr. Lovatt's failure to assert himself and his position. He failed the Society, himself as Local Director and Kim.

Mr. Lovatt denied that he participated in the decision to return Kim to her parent's home. His responses in this area of his testimony were to the effect that, even as he testified in August, 1978, he was not quite aware of when the decision to return Kim was made.

In my opinion he was refusing to recognize the weight of the evidence that, for all intents and purposes, Mrs. Harvey had made that decision by February 25, 1976 and perhaps even earlier. He did say that the Society's approach to Kim's case after the court hearing in February, 1976 was directed towards Kim's return. He said that was:

> "...because of the circumstances that we saw at that time, that there was cooperation from both parents and that the reports from the case worker to the supervisor were favourable."

It seems to me that he permitted himself to be deluded by Mrs. Harvey or by himself.

He said his opinion as to whether or not Kim should be returned was not sought and he did not question the decision.

He said he had understood there had been a conference to decide when Kim would be returned. I have already expressed my opinion of that so-called "conference." It was merely a meeting of Mrs. Kirby and Mrs. Lo. It certainly was not a conference in any meaningful sense or in the sense in which Mr. Zwerver and other well qualified witnesses used the term. By reason of the unusual relationship between the two departments of the Society, no one really questioned or disputed Mrs. Harvey's basic decision that Kim would be returned to her home.

Mr. Lovatt testified that Mrs. Harvey kept him apprised of her ongoing supervision of Kim's case after Kim was returned. In June and July, 1976 he was told by Mrs. Harvey that, while there were problems at the beginning, the marriage appeared to be on a firm basis and Kim was settling into the home fairly well.

Mrs. Harvey telephoned Mr. Lovatt at his home on August 12, 1976 to advise him that Kim had died "because of a fall off the porch." He treated the incident as an accident and raised no question about it. He said that at that time he did not suspect Jennifer Popen "was likely to do any positive damage" to Kim.

I am uncertain of the sense in which he used the adjective "positive", but I feel he used it as a synonym for "intentional" or "deliberate" or "demonstrable."

He said he was convinced in his own mind at that time that Kim had not been in danger of abuse by her parents and that he was also then satisfied with the way in which the Society was handling Kim's case.

That latter statement cannot be reconciled with some of his responses when asked to comment upon some of the contents of a statement given by Mr. Heath to the Inquiry's Investigators.

Mr. Heath had said, in that statement, that in June, 1975 Kim's file was apparently mislaid or for some other reason her case was not assigned to a worker. Mr. Lovatt agreed that was not satisfactory.

Mr. Heath had said that in June, 1975 the Society was informed that during the previous six weeks Kim was apparently abused on two occasions, but the Society made no attempt to confirm the information with the hospital or family doctor.

Mr. Lovatt agreed that was not appropriate, but claimed he was not aware that the Society had not made that effort.

That latter is hardly worthy of one who said he had been kept generally aware of the case and who, as Local Director, had ultimate responsibility for its proper handling by the Society.

Mr. Heath had commented upon the apparent difference between the Society's records and those of the Sarnia Police Force with reference to contacts between the Society and the police shortly after June

17, 1975. Mr. Lovatt acknowledged that the Society appeared to have left investigation of the matter entirely to the police. He acknowledged that the Society should not have assigned responsibility to the police, but should have invited the police to join in the Society's investigation.

But, in almost the same breath, Mr. Lovatt complained about the failure of the police to investigate the allegation of two prior incidents of abuse. He said that, as a result of that alleged failure by the police, the Society had nothing to work on. He agreed it was incumbent upon the Society to request the co-operation of the police in the investigation.

All of that presents to me a sense of confusion and uncertainty in Mr. Lovatt's approach to Kim's case and relationships with the police. The latter part at least was an inappropriate attempt to deflect towards the police criticism which can properly be made of him and of the Society.

In the same area, perhaps in seeking to defend that apparent confusion and uncertainty, he said:

> "...[Kim's] was the first really serious possible abuse case that I can remember our Society having. We had nothing to go on from the past."

That statement then leads back to the absence of practices and procedures to meet various situations as they arise so that workers are not then floundering when dealing with a matter under emergency or stressful conditions and without precedence in their personal experience as social workers.

Mr. Lovatt's claim of having nothing to go on from the past is perhaps defensible if limited only to the experience of persons dealing with cases of abuse of children in Sarnia and the County of Lambton. As I have noted elsewhere in the Report there was, even in 1975, an abundance of material available to the Society to assist its workers in handling cases of child abuse. It was Mr. Lovatt's duty to ensure that the personnel of the Society made appropriate use of such material. There was no indication from any testimony that anyone on the Society's staff did more than rely on his or her own knowledge and experiences in any dealing with or on behalf of Kim. On the basis of the testimony of Mr. Zwerver and others that knowledge and experience was an insufficient base for reliance.

While there was an abundance of helpful material available to the Society in 1975, I recognize that the amount of such material has been increased substantially in the succeeding years.

Mr. Lovatt expressed the opinion that Mrs. Harvey and he, as well as other experienced employees of the Society, were qualified to manage Kim's case.

The testimony shows that Mr. Lovatt took no direct and continuing interest in Kim's case. That was so despite his comment that it was "the first really serious possible abuse case" in the Society and thus was without precedent as it were.

Mr. Carter was an experienced worker who may have been among those whom Mr. Lovatt felt possessed sufficient qualifications. But Mr. Carter was removed by Mrs. Harvey and replaced by Mrs. Lo. Mrs. Lo certainly was not experienced or qualified.

Effectively, management of Kim's case was left to Mrs. Harvey. Mr. Lovatt knew it and accepted it. He also knew and accepted Mrs. Lo's involvement.

Mr. Lovatt acknowledged that, in early 1976, he was not aware of Mr. Carter's concerns about the case as recorded in the files of the Family Services Department. Nor was he then aware of the concerns expressed by Mrs. Kirby, Police Constable Wyville and Mr. Carter to Mrs. Harvey in February, 1976.

That is a further demonstration of Mr. Lovatt's failure to concern himself sufficiently with Kim's case. He did not even read the recording. He relied entirely upon Mrs. Harvey's oral reports which, it would seem, were not complete. He made no other inquiries.

In my view, on the testimony of qualified witnesses, Mr. Lovatt, as the Local Director of the

Society, was required to supervise Mrs. Harvey who, in turn, was required to supervise Mr. Carter or Mrs. Lo and any other subordinate worker engaged in any way in relation to Kim.

From the testimony of Mr. Lovatt and Mrs. Harvey it would seem that Mr. Lovatt's supervision of Mrs. Harvey's performance of her duties in respect of Kim's case was confined to his unquestioning acceptance of her oral reports. He seems simply and totally to have deferred to Mrs. Harvey. He did not question anything. He made no suggestions. All of that was so, even though Kim's case was recognized by him as being an unusual case for the Society and as being its most serious then-current case. He merely required Mrs. Harvey to supervise Mrs. Lo closely.

At the same time he knew that the Society did not have any established policy or procedures for the handling of cases of child abuse. Nonetheless, as the Local Director of the Society, he should have been aware that cases of child abuse require careful and particular handling in all stages, from the investigation of the initial report to the termination of the case.

While the Society had not prepared its own guidelines for the handling of cases of child abuse there was, even in 1975 and prior years, an abundance of material in the literature and other resources. Perhaps one might be too critical to say that Mr. Lovatt was to be criticized for failure to develop such guidelines. But it is not too harsh to say that, even without anything written within the Society, he should have been aware of the need for care in the handling of child abuse cases. The guidelines for the management of such cases published by the Ontario Association of Children's Aid Societies in July, 1976 emphasize the need for careful management, consultation of all persons and organizations involved in the case, and planning. The same publication contains a lengthy bibliography and list of other materials. Much of what was contained therein was available prior to 1975.

In my view Mr. Lovatt should have been more energetic in the performance of his duty to supervise Mrs. Harvey. He should have asked questions designed to ascertain whether appropriate plans for the management of Kim's case were being formulated in September, 1975 and subsequently. He did not ask such questions.

One can only speculate as to the response that would have been made to any such question. Nothing upon the Inquiry satisfies me that there was any plan for Kim beyond the decision to take her into care on August 31, 1975 and the decision, in or before February, 1976 to return her to her parents.

Mr. Lovatt should have asked what goals were established in any such plan. He did not. Again there is nothing to indicate that any goals were set.

Mr. Lovatt was content to understand that a conference had been held to decide when Kim would be returned. He was not aware of when it was decided that Kim should be returned. Even understanding that there had been a conference as to when she would be returned he should have asked about the decision that it was appropriate that she be returned. He might appropriately have asked "What procedure led to that decision? Who made the decision and when? Who assisted in making the decision? What information was relied upon to support the decision?" He did not ask any such question.

Mr. Lovatt should have asked similar questions about the decision as to when Kim should be returned. Who was present at the conference? What was the rationale of the decision? What factors were considered? He did not ask any such question.

Apart from asking questions of Mrs. Harvey, Mr. Lovatt should have been making suggestions to her.

He said he had recognized the inconclusive results of Dr. Curtin's interviews with Annals Popen and Jennifer Popen. He should have made suggestions as to actions that might have been taken to resolve some of the uncertainty. Dr. Curtin, in his report, had made some suggestions as to other observations and tests which might have been helpful. Mr. Lovatt did not make any such suggestion.

He was aware that Jennifer Popen was pregnant in 1976. He should have been aware that the birth of the expected child might have some effect upon Jennifer Popen and her ability to cope with Kim's return. He should have suggested to Mrs. Harvey that consideration be given to that factor, particularly the possibility of post-partum depression. He did not make any such suggestion.

Probably the list of questions that Mr. Lovatt should have asked, but did not, and of suggestions he should have made, but did not, could be considerably extended. The testimony of expert witnesses upon the Inquiry emphasized the complexities and subtleties of child abuse cases and the many variable factors that may be encountered in any individual case. Mr. Lovatt, as Local Director of the Society, should have had some general knowledge of all of this and should have done more than passively accept Mrs. Harvey's reports and decisions and her actions.

Mr. Lovatt was in error in his comprehension of the significance of the results of the prosecution of Annals Popen and Jennifer Popen upon the charge of failing to protect Kim. There was no testimony to establish that he was aware of the discussions between Mr. Lang and Mr. Higgins which led to those results. But nonetheless, despite those results, he should have known that the order placing Kim in the care of the Society was the result of a procedure entirely separate from the prosecution of Kim's parents.

Mr. Lovatt felt that the decisions of the Court required or enabled supervision only of Annals Popen. That may have been so insofar as the Probation Services were concerned. So far as the Society was concerned, Kim was placed in its care and it was responsible for all factors affecting her well-being. If there was any doubt as to the powers of the Society to be concerned with Jennifer Popen, whether as to her behaviour, health, either physical, mental or emotional, or as to any other aspect of her life, the Society could have returned to the Court to seek clarification of the matter and any other order which the Society might have felt was necessary to enable it to perform its statutory duty.

Mr. Zwerver had noted that the personnel of the Society generally had an unsatisfactory level of knowledge and understanding of the appropriate legislation and regulations and of court procedures and functions. It would seem that Mr. Lovatt's knowledge and understanding of those matters was subject to the same observation. As Local Director of the Society he had a duty to the Society, its staff and the children and families it served. That duty was to be knowledgeable in those areas. He failed in that duty.

In February, 1976, after the hearing and determination of the Society's application whereby Kim was made a ward of the Society for a period of six months, Mrs. Harvey removed Mr. Carter from the case. She appointed Mrs. Lo in his stead.

Mr. Lovatt was aware of that action by Mrs. Harvey. He accepted it as a *fait accompli*. He was not consulted about it. He asked no questions about it and he made no comment or suggestions about it other than to require Mrs. Harvey to provide close supervision of Mrs. Lo's activities on the case.

Mr. Lovatt must have had some concern as to Mrs. Lo's ability to provide an adequate level of service to such a serious case. While he had not participated directly in the process whereby she was employed by the Society just a few weeks earlier, he should have been aware of her lack of training and experience.

Mr. Lovatt testified that, while it had not been reduced to writing, there was an established procedure within the Society which was to be followed in the event a case were to be transferred from one worker to another. That procedure, as he described it, involved a conference of at least the two workers directly involved, the worker being relieved and the worker appointed in his or her stead, together with their Supervisor. Then the worker being relieved would introduce the new worker to the family being served in the case. He said that would involve also a discussion of the goals which the Society hoped to achieve.

If there were such an established procedure it was not followed in Kim's case. There was no conference of the two workers, Mr. Carter and Mrs. Lo, and the Supervisor, Mrs. Harvey. There was no introduction of Mrs. Lo to Annals Popen and Jennifer Popen by Mr. Carter. There was no discussion of goals to be achieved.

Mr. Lovatt acknowledged that Mr. Heath's comment, that there was no conference or review of Kim's case at the time Mr. Carter was relieved and Mrs. Lo was appointed, disclosed a failure by the Society. He accepted it as a correct statement.

He went on to say:

> "What I'm not aware of is the kind of pressures under which this was made at the time, why it was done quickly."

I infer from his choice of tense that he lacked that awareness even as he testified in 1978. If that be so I am unable to understand why by then, about eight months after the case became a matter of public interest and concern, he had not made himself aware.

Even if I be in error in that inference, he certainly meant that, when he was advised by Mrs. Harvey of her appointment of Mrs. Lo to replace Mr. Carter, he was not aware of the "pressures" and of the reasons for haste.

The obvious comment upon that is that Mr. Lovatt should have inquired. He did not. It was another example of his incompetence or lack of interest.

Mr. Lovatt did testify that he had been told that the relationship between Mr. Carter and Jennifer Popen had become "unworkable." He said he was told that the case would require a lot of time and attention, but it could develop well if given proper attention.

As he continued his response, he, perhaps unwittingly, condemned himself in another area upon which I have commented, namely the qualifications of the staff of the Society. He, as Local Director, was responsible for the employment of staff and for ensuring the adequacy of their knowledge and expertise. In any event he made the rather extreme statement,

> "We had no highly qualified workers on staff at that time."

That appears to be an unnecessarily harsh assessment of the entire staff of the Society. But, if it was justified, he must bear the responsibility for the existence of the condition. And if the conditions existed all the more was it incumbent upon him to take a particularly close and detailed interest in Kim's case.

In my view his criticism of the staff of the Society was really a condemnation of himself for permitting an unsatisfactory situation to exist and for failing to take appropriate steps to protect Kim from the harm that might flow from that unsatisfactory condition.

He then went on to say that Mrs. Lo, a new employee, was the only long-term worker who then had a light case load and thus the time to take on the case. He said that Mrs. Harvey accepted his requirement that she "very closely" supervise Mrs. Lo.

He did not indicate that he had considered any possible alternatives to the transfer of Kim's case to Mrs. Lo or that there had been any discussion about such alternatives. There was no conference even between Mr. Lovatt and Mrs. Harvey in relation to the transfer. Mrs. Harvey made the transfer. Mr. Lovatt accepted it, almost unquestioningly.

Mr. Lovatt was asked about Mr. Heath's suggestion that some "danger signals" in Kim's case were not recognized. One such item mentioned by Mr. Heath related to Jennifer Popen's "tragic childhood."

Again, in purporting to defend the Society's actions, and thus himself, with reference to that item, Mr. Lovatt said:

> "Mrs. Popen's admission of her own tragic childhood, we had very little information as to what this actually was at that time, and we were not aware of how much of it was truth and how much was not."

He added that it had not come to his mind to inquire further into that area. He acknowledged that there should have been such further inquiry. By that testimony he had again demonstrated his own inadequacies and failures as well as those of the Society.

As he continued in this area he acknowledged that he had relied then upon Mrs. Harvey's interpretation of Dr. Curtin's report and consultation note attached to the pre-sentence report upon Annals Popen prepared in March, 1976. He did not see the report until later.

In all of this Mr. Lovatt sought refuge in the statement that the situation was uncertain and "so muddy." He said investigation by the police might have cleared the situation. He said there were two or three unproven allegations and only the one proven, that latter being against Annals Popen.

That is not a tenable position. I have commented upon the role of the Sarnia Police Force in Chapter XIX of this Report. Whatever shortcomings there may have been in the performance of the police function the Society was primarily responsible for the investigation of all reports of real or suspected abuse of children. That was a part of the duty imposed upon all children's aid societies. All of the expert testimony upon the Inquiry emphasized that the Society had that duty and should have fulfilled it. The police function was over and beyond the Society's function and did not relieve the Society of its responsibilities.

Mr. Lovatt appeared to be sincere in expressing that position. It is but another example of his lack of qualification to be the local director of a children's aid society such as the Society.

Mr. Lovatt described as an "oversight" the failure of the Society to arrange for Kim to be medically examined after her return home in May, 1976. In my opinion it was an oversight of great importance. Medical examinations in June, July and August, 1976 may very well have disclosed the onset of the abuse and injuries which eventually caused Kim's death. The realization that the Society intended to have Kim examined might very well have prevented any injury in that that realization might have in itself inhibited anyone who might otherwise have injured Kim.

Mr. Lovatt bears some responsibility for the "oversight." Had he been properly performing his duty to supervise Mrs. Harvey he should have inquired about medical examinations. He made no such inquiry. That failure is in keeping with so many of his other failures.

Mr. Lovatt acknowledged that the Society failed to maintain an appropriate liaison with the Probation Service. His defence of that failure by the Society was that in 1976 the arrangements among the various agencies and organizations in the County of Lambton was informal. Mr. Lovatt by failing to ask questions of Mrs. Harvey contributed to this failure by the Society. Any supposed informality is no defence to that criticism. In any event Mr. Lovatt, as Local Director of the Society, contributed to any such informality.

The same sort of situation prevailed in connection with contact between the Society and The Lambton Health Unit. Again and for the same reasons Mr. Lovatt shares responsibility for the failure of the Society in that relationship.

Despite all of those admissions Mr. Lovatt was able to make a surprising response when asked to comment upon Mr. Heath's statement expressing doubt that the Society's supervision of Kim's care was sufficiently adequate. Mr. Lovatt said he did not agree with Mr. Heath's statement. He said he felt at the time that the supervision was adequate. That he was able to have that feeling demonstrates his willingness to form opinions on important matters without sufficient information and without any question or effort to supplement such information.

That a case such as Kim's could be handled as it was by the Society without Mr. Lovatt knowing how deficient was that handling is an illustration of his inability to fulfill his duties.

Mr. Lovatt's performance in respect of Kim was entirely inadequate. The same is to be said of the supervision of Kim furnished by Mrs. Harvey and Mrs. Lo. Mr. Lovatt by his inadequacy permitted their inadequacies to exist undetected until after Kim's death.

Perhaps some of Mr. Lovatt's failures in respect of Kim are summarized in the following extract from the transcript of the proceedings upon the Inquiry.

He was asked questions and responded as follows:

> "Q. What do you feel that you could have done in this case that you didn't do?
>
> A. Well, I think I should have been involved in the consultation process. I think had I been more involved we may have taken more time over some of the decisions that were made. However, it was, at that time it was recognized that the management of Family Service cases was primarily the Supervisor's job."

He was not involved sufficiently. He left authority with Mrs. Harvey. He cannot avoid responsibility by abandoning his authority and permitting Mrs. Harvey to appear to assume it.

Even Kim's death did not arouse any unusual concern in Mr. Lovatt. Again, without question he accepted her death as being the result of an accident. He asked no questions. It was almost as if he believed the adage that ignorance is bliss. If so he overlooked the obverse of that proverb to the effect that ignorance of the law is no defence. He made no suggestions as to any investigation that might be conducted. He was on vacation and left the Society in Mrs. Harvey's hands. He left it to Mrs. Harvey to advise the President of the Society that Kim had died.

In my view that was an unsatisfactory position for him to adopt. It was consistent with his prior conduct or policy of avoiding involvement and thereby, apparently he hoped, liability or responsibility.

On his return from vacation his stance and conduct in respect of Kim and her death and the investigation into the circumstances surrounding it was such that "bizarre" might be the only word to describe it.

In my view Mr. Lovatt began then to realize the extent of his failure to achieve the standard of performance which was reasonably to be expected of a local director of a children's aid society. He began a deliberate programme of withholding comment in any form, oral or written, upon Kim's case. His expressed reason for this programme was that, since Annals Popen and Jennifer Popen had been charged with manslaughter, the matter was now in court and comment was prohibited. He even used the expression "*sub judice.*"

In what I regard as a pitiful and futile attempt to defend the indefensible, he said that the meetings of the Board of Directors of the Society were open to the public and any comment at such a meeting might prejudice the right of Annals Popen and Jennifer Popen to a fair trial.

This indicates to me how shallow his reasoning was. While meetings of the Board of Directors might be open to the public I am not aware of any legislation or similar authority which would prevent the Board of Directors from dealing with some matters in camera or in closed session. Another procedure which comes readily to mind is that of utilizing a committee meeting as the forum for his report upon the case. A third even less difficult procedure would have been for him to report privately to the President of the Society and to explain his concerns about the effect of the matter being *sub judice*. Then the President at least would have been informed and would be able to decide if or how the other members of the Board of Directors might be informed.

By purporting to invoke the principle of *sub judice*, Mr. Lovatt gave a further demonstration of the truth of the proverb that a little knowledge is a dangerous thing.

In my view Mr. Lovatt was in error, and grossly so, in his understanding of the effect of the matter being *sub judice*. In my view there was no impediment to his reporting to the Board of Directors of the Society upon the matter of Kim's death while in the care of the Society.

If he really did believe what he professed, it is another example of his lack of qualification to be a local director of a children's aid society.

That he sought no advice or assistance in his professed dilemma is further mute testimony to his lack of qualifications and competence.

Mr. Lovatt imposed that restriction upon himself without seeking advice from anyone as to whether or not it was appropriate. He applied it even to the extent that he did not mention the case to any member of the Board of Directors of the Society privately or informally and did not mention it in any report, oral or written, to the Board of Directors of the Society or any officer or committee thereof.

Mr. Lovatt's scheme of silence was successful from August, 1976 until December, 1977 when it was shattered in an explosion of disclosure of what until then had been concealed from almost everyone. In that period of time Jennifer Popen and Annals Popen were charged with manslaughter and arrested. This was mentioned in and by the media. They appeared in court and after a preliminary hearing were committed for trial. This was mentioned in and by the media. In December, 1977 their trial in a court composed of a judge and jury began in Sarnia and was duly reported upon in and by the media.

It was only then, in December, 1977, that the public and the members of the Board of Directors of the Society began to learn the true nature of the involvement of the Society in Kim's life and death. Mr. Higgins was one member of the Board of Directors who did have prior knowledge. Until then, so far as the testimony upon the Inquiry reveals, no member of the Board of Directors of the Society, other than Mr. Higgins, knew that Kim, the child named in the published articles, was a ward of the Society when she died. In August, 1976, Mr. Allen had been informed of Kim's death, but he had not associated that message with the subsequent news items relating to the charge of manslaughter against Annals Popen and Jennifer Popen. Apart from that no member of the

Board of Directors had any information as to any of the Society's involvement in Kim's life from June, 1975 until her death in August, 1976.

Mr. Lovatt had succeeded in keeping all of that knowledge and information from the Board of Directors.

In my view his decision to leave the Board of Directors unaware and uninformed is indefensible. It was an utter dereliction of his duties and responsibilities to the Board of Directors and to the Society. It might have left other children exposed to similarly poor protection by the Society. It certainly concealed all of the weaknesses of the structure and staff of the Society. It certainly protected Mr. Lovatt from adverse comment whether within or without the Society.

Mr. Lovatt knew that the Board of Directors of the Society relied upon him. He failed them.

In my view Mr. Lovatt was dissembling in his testimony purporting to explain his failure to report to the Board of Directors. In his professed desire to protect the right of Annals Popen and Jennifer Popen to a fair trial he lost sight of his own responsibilities as Local Director of the Society.

I am reinforced in this view of Mr. Lovatt by the manner in which he reported the matter to the Board of Directors at a special meeting of the Board convened by the President of the Society when the matter came to the attention of him and others through the media.

A copy of the minutes of that special meeting of the Board of Directors was produced as an exhibit upon the Inquiry. Those minutes contain a summary of the report made by Mr. Lovatt at that meeting. That summary is reproduced as Schedule 2-W to this Report.

Earlier, under date of December 8, 1977, a report upon Kim's case was prepared by Mrs. Harvey for the Ministry. This was at Mr. Lovatt's request. A copy of that report was produced as an exhibit upon the Inquiry and is reproduced as Schedule 2-X to this report. Mr. Lovatt was aware of the contents of that report. He testified that he believed it to be a complete report.

On December 8, 1977 Mr. Lovatt reported orally, by long-distance telephone, to Mr. Charko, of the Child Welfare Branch of the Ministry. That report was made at Mr. Charko's request for information about Kim's case. Mr. Charko prepared a memorandum of that conversation which was typed under date of December 12, 1977 before Mrs. Harvey's report of December 8, 1977 was received in the Ministry. A copy of Mr. Charko's memorandum is reproduced as Schedule 2-Y to this Report.

In their report and in their testimony upon the Inquiry, the Farina Committee observed discrepancies between the report dated December 8, 1977 and the report to the Board of Directors on December 15, 1977 and between the records of the Society and those of the Sarnia Police Force. I have commented thereon in Chapter XXVIII of this Report.

Mrs. Harvey was present at the special meeting of the Board of Directors held on December 15, 1977. She joined with Mr. Lovatt in answering questions about discrepancies.

It may very well be that Mr. Lovatt in making the oral report to Mr. Charko on December 8, 1977 and the report to the Board of Directors on December 15, 1977 relied upon information given to him by Mrs. Harvey or recorded in the files of the Society.

Even a cursory examination of those three documents in the light of all the testimony upon the trial will reveal inconsistencies and errors and omissions.

Mr. Lovatt's oral report to Mr. Charko mentioned some of what occurred on June 17, 1975. There was however no mention of the information given to the Society to the effect that Kim may have been abused on earlier occasions. More importantly, while Mr. Lovatt spoke of the Society's decision to open the case and to provide service on a protection basis, there was no mention of the fact that the case was not opened and no service was provided by the Society until August 31, 1975.

Mr. Lovatt's oral report to Mr. Charko was that "Mr. Popen was found guilty of child abuse." That in itself is imprecise and misleading. Annals Popen was charged with failing to protect Kim, not with assault.

The oral report to Mr. Charko was that the Court ordered Jennifer Popen and Annals Popen to take a Parent Effectiveness Training Course and "Mr. Popen would join Alcoholics Anonymous." That is inaccurate and misleading.

Judge Nighswander's reasons for judgement upon the Society's application made no mention of the Parent Effectiveness Training Course or of Alcoholics Anonymous; nor was the Order directed against Jennifer Popen in any way. Judge Nighswander merely placed Kim in the care of the Society and suggested that Annals Popen would have to satisfy the Court that he had successfully done something about his drinking problem before Kim would be returned.

The probation order made earlier, as a result of Annals Popen's plea to the charge under section 40 of The Child Welfare Act, was only in respect of Annals Popen and imposed terms that he abstain totally from drinking alcoholic beverages and that he take treatment for his alcoholism.

The memorandum made by Mr. Charko, after recording Mr. Lovatt's comments on events from August 31, 1975 to until as late as Kim's return home on May 27, 1976, stated

> "during this period of time the Society visited the family on a weekly basis and found them to be very co-operative and willing to attempt to improve their family relationship."

That is inaccurate and misleading, particularly if the phrase "during this period of time" was meant to include the period from August 31, 1975 to February 23, 1976. In that period Annals Popen and Jennifer Popen were not co-operative and any visits by the Society were of minimal value and were not made on a weekly basis.

While Mr. Charko recorded Mr. Lovatt's comment as to Kim's brother, Karie, having been taken into care by the Society, there is no mention that that action was taken only after the intervention of outside forces, such as the Crown Attorney and the Coroner.

Mr. Lovatt is responsible for any misapprehension that may have arisen from his oral report to Mr. Charko.

Mrs. Harvey's report dated December 8, 1977 was prepared at Mr. Charko's request. It too has some errors and omissions.

It states that Jennifer Popen and Annals Popen refused the services of the Society and The Lambton Health Unit. It does not mention Mrs. Saul's recommendation, accepted by Mrs. Harvey, that the case required long-term intervention by the Society.

It states "the case was not assigned." It does not mention that no one could explain what had happened to the material for the file between June 17, 1975 and August 31, 1975. Nor does it mention that the case was not even opened, let alone assigned, until August 31, 1975.

It speaks of a telephone call to the police and of a suggestion by the police that the Society not visit the home. As I have written in Chapter VI I am not satisfied that the police made any such suggestion or request.

It states that the Society learned of "a previous seemingly unclarified situation." That appears to relate to Kim's hospitalization in March 1975. The form of Mrs. Harvey's report would, of itself, give the impression that the Society learned of that "unclarified situation" on or after August 31, 1975. In fact, on June 17, 1975, Police Constable Gander had advised the Society of two incidents of reported abuse to Kim during the preceding six week period. Mrs. Dick had mentioned this in her recording dated June 17, 1975.

Mrs. Harvey's report states that the solicitor for Annals Popen and Jennifer Popen wanted the Society's application for wardship to be heard on the same day as the charge against Jennifer Popen and Annals Popen under The Child Welfare Act. It went on to state that the Society wanted the matters heard on separate dates.

I am not satisfied that either of those statements is correct. Mr. Higgins arranged to have the charge under The Child Welfare Act dealt with on February 23, 1976, two days before the Society's application was heard. But neither Mr. Higgins nor anyone on behalf of the Society expressed in Court any desire such as Mrs. Harvey mentioned in her report.

Mrs. Harvey's report contains the statement that on, February 25, 1976, Annals Popen and Jennifer Popen were "advised to co-operate" with the Society and to attend courses suggested by the Society. That is at variance with Mr. Lovatt's oral report to Mr. Charko and with the transcript of the proceedings in Court.

In her report Mrs. Harvey wrote at some length to describe Mr. Carter's difficulties. She wrote of Mrs. Lo's weekly visits from February 27 to July 6, 1976. In that latter regard her report is more accurate than Mr. Lovatt's oral report to Mr. Charko.

Mrs. Harvey wrote of the psychiatric assessment of Annals Popen, obtained as part of a pre-sentence report in March, 1976. She wrote that that assessment indicated that Annals Popen was not in need of psychiatric treatment. She made no mention of the difficulties expressed by Dr. Curtin in that report to the effect that the information provided was such as to cause him to wonder about its reliability. Dr. Curtin's report was not as positive as Mrs. Harvey suggested.

Mrs. Harvey wrote of a conference to decide that Kim would be returned to her home before the birth of Jennifer Popen's next child in July, 1976. She did not mention that in fact she had made the decision that Kim would be returned and that any conference was limited to discussion only of when the return would be effected in relation to the anticipated birth.

Mrs. Harvey wrote of a nurse of The Lambton Health Unit being involved with the family after the birth of Karie. She did not report how limited was that involvement. The nurse had made only one short visit on August 10, 1976, the day before Kim died. That visit related only to Karie and his care. The nurse did not see Kim that day.

Mrs. Harvey's report would give the impression of ongoing involvement by The Lambton Health Unit from Karie's birth. Mrs. Harvey's report is misleading.

Mrs. Harvey wrote of the police investigation on August 12, 1976 and that "it was no longer possible to talk with the family." No basis for that statement was given in Mrs. Harvey's report or elsewhere. Mr. Lovatt in his testimony said simply that, because the case was already before the Court, he consciously decided "to leave the matter as it was." That comment was related to the question of informing the Board of Directors. It seems reasonable to extend its implication to include investigation of Kim's death by the Society because Mr. Lovatt acknowledged he did nothing to gain any information when senior police officers seemed inclined to give him only the slightest of information in respect of the police investigation of Kim's death.

Mr. Lovatt's report to the Board of Directors on December 15, 1977 contained a number of statements which are surprising in light of his oral report to Mr. Charko of December 8, 1977 and Mrs. Harvey's written report prepared at his request the same day.

In his report to the Board of Directors he said that in June, 1975 there was insufficient evidence to warrant the Society's intervention, that Jennifer Popen had a plausible reason for Kim's bruises and that the police accepted a watching brief. Mrs. Harvey's report made no mention of any "plausible reason" given by Jennifer Popen.

More importantly, Mr. Lovatt's report is false and misleading when it states that there was insufficient evidence to warrant the Society's intervention. If "intervention" were interpreted as being synonomous only with "apprehension of Kim" his statement might have been reasonable and understandable. However, in the light of the testimony of both Mrs. Saul and Mrs. Harvey, supported by that of Mrs. Dick, it is abundantly clear that, in June, 1975, Mrs. Saul had felt that the Society should be involved and work with the Popen family immediately and that the work would continue for a long time. It is equally clear that Mrs. Harvey had shared Mrs. Saul's opinion.

Regretfully one can only infer that Mr. Lovatt sought to mislead the Board of Directors. He did not tell them that the file material was misplaced and that, contrary to the intention and desire of Mrs. Saul and Mrs. Harvey, the file was not opened in June, 1975. That "oversight" in the handling of Kim's case was such a gross error by the Society that Mr. Lovatt could not simply have missed it if he had made any reasonable effort to prepare a full and forthright report to the Board. His failure to mention it could only have been deliberate. While there was no direct testimony as to his motives, I infer he was seeking for his own reasons to conceal his inadequacies and those of the Society.

Clearly Mr. Lovatt was still relying upon Mrs. Harvey when he spoke of the police accepting a watching brief. He had made no inquiry of the police.

The next paragraph of his report, as recorded in the minutes of the meeting, is an even more glaring example of misstatement by Mr. Lovatt. He said a call to the hospital made the Society aware of previous injuries to Kim and therefore she was taken into care.

That would lead one to believe that the Society, on August 31, 1975, had initiated a call to the hospital and, only then, learned of some earlier injuries to Kim.

In fact, on June 17, 1975, the Society had been made aware of allegations of two prior incidents of injury to Kim in which child abuse was suspected.

In fact, on August 31, 1975, the police and hospital personnel had sought the assistance of the Society because of Kim's injuries existing at that date.

Mr. Lovatt's report to the Board of Directors does not disclose that Kim had suffered fresh injuries which led to her admission to hospital on August 31, 1975. Mr. Lovatt's report makes no mention of the discovery, by X-ray, of rib fractures suffered by Kim between March and September, 1975.

In my view those errors in Mr. Lovatt's report are too gross to have been inadvertent or to have been the result of poor selection of words and terminology. In my view they were part of an effort to mislead the Board of Directors and to conceal the truth.

Mr. Lovatt's report mentioned that between September, 1975 and February, 1976 the Society was cautioned not to talk to Kim's parents. His report did not disclose that the so-called "caution" was issued by Mr. Higgins on behalf of Annals Popen and Jennifer Popen and that the Society took no steps and sought no advice to attempt to be relieved of any supposed limitation upon its right to do what Mr. Carter regarded as normal casework.

Again the Board of Directors were misled. The form of Mr. Lovatt's report would reasonably lead them to believe that the "caution" came from some source, perhaps such as the Court, empowered or authorized in some way to direct or regulate the activities of the Society or perhaps from a source intending to be helpful to the Society.

The next portion of Mr. Lovatt's report is another instance of error and omission. He told the Board of Directors that Annals Popen "accepted full responsibility" for Kim's injuries in August, 1975 and that Jennifer Popen was absolved from guilt.

In Chapter VIII of this Report I have reviewed the transcripts of proceedings in the Provincial Court (Criminal Division) of the County of Lambton on February 23, 1975. That transcript contains no acceptance of full responsibility by Annals Popen. It discloses merely a plea of guilty and a disclaimer of knowledge of what happened, coupled with a willingness on the part of Annals Popen to believe what he was told.

Furthermore, Jennifer Popen was not "absolved from guilt." By reason of an agreement with Mr. Higgins the Crown Attorney chose not to proceed against her. In testimony upon the Inquiry both Mr. Lovatt and Mrs. Harvey decried that action by the Crown Attorney and proclaimed their continuing suspicion as to Jennifer Popen's involvement with the injuries to Kim. Mr. Lovatt did not advise the Board of Directors of the Society of that.

The next statement by Mr. Lovatt to the Board of Directors is incomprehensible. He said that, from August, 1975 until February 25, 1975, "considerable evidence had accumulated on Mr. Popen's behaviour." That is just not so. Until February, 1976 Mr. Carter, who was then assigned to the case, had been unable to carry out all of the work he wanted to do on the case and which he regarded as normal casework. Even the two items mentioned by Mr. Lovatt, namely that Annals Popen had stopped drinking and had attended Alcoholics Anonymous, were largely, if not entirely, based on statements by Jennifer Popen and Annals Popen.

That leads directly into the next part of Mr. Lovatt's report to the Board of Directors. He told the Board that Annals Popen was examined by a psychiatrist pursuant to an order of the Court. That may be correct in spirit, but the examination came about as part of a pre-sentence report ordered by Judge Nighswander after Mr. Higgins made some submissions on behalf of Annals Popen wherein he had requested some investigation before sentence was imposed and had suggested that a probation officer might assist the Court.

The next part of Mr. Lovatt's report to the Board of Directors is another mixture of error and omission. He said the reports following the psychiatrist's examination were positive.

In fact there was only one report upon Annals Popen, but attached to it was an earlier consultation note written after the psychiatrist's examination of Jennifer Popen some months earlier.

Mr. Lovatt then set forth only the first sentence of the final paragraph of Dr. Curtin's report upon Annals Popen dated March 19, 1976. Even that sentence is not, in my view, positive. It is merely a statement that, if certain things were to occur, the future risk to Kim would be minimized.

Mr. Lovatt might more properly have informed the Board of Directors of the concerns expressed by Dr. Curtin in the preceding paragraphs of his report. Dr. Curtin, after setting out Annals Popen's abstinence, attendance at Alcoholics Anonymous and willingness to attend courses, had written:

> "Even though all these things would surely minimize the danger in the future I am really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen. He denies ever having been abused himself as a child and in fact, my enquiries from him yield such little abnormality that I wonder about his reliability as an informant. I would think therefore, that a more accurate assessment of his emotional state will likely result from objective enquiries rather than from any enquiries I might make from himself or his wife.
>
> In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it."

In my opinion, Dr. Curtin's report is far from positive. Mr. Lovatt did not correctly and fully apprise the Board of Directors of the contents of that report. That reinforces my opinion of Mr. Lovatt expressed earlier in this Chapter.

In the next part of his report Mr. Lovatt spoke of The Lambton Health Unit and the probation officer confirming that they saw nothing to lead them to suspect that Kim had been abused. That may be correct so far as it goes, but it did not inform the Board of the limited observations that those informants had felt free to make. Thus the Board of

Directors was not informed of the limited and doubtful value of any such observations.

Then Mr. Lovatt went on, in his report to the Board of Directors, to enumerate seven pieces of information which, he said, were on file in the Society when "the decision was made to return Kim home on May 27, 1976."

He said that The Society knew that Annals Popen and Jennifer Popen wanted Kim returned and Mr. Higgins would "fight" for that. That is understandable, but the probability of a "fight" should not have swayed the Society in its consideration of whether or not Kim's return would be appropriate. One would expect that the Society, responsible for Kim's protection, would "fight", if need be, to protect her.

More seriously, no mention was made of Judge Nighswander's statement, in his reasons for judgement expressed on February 25, 1976, that Annals Popen

> "must give evidence that he had done something [about his alcohol problem] and that it is succeeding, before the Court will permit the child to return to its parents."

Even if there were a "fight" there was no indication that Kim's return would necessarily result.

Mr. Lovatt said that Annals Popen and Jennifer Popen had attended the Parent Effectiveness Training Course and had participated satisfactorily. He did not say that the Parent Effectiveness Training Course had begun on April 26, 1976 and the decision as to Kim's return was made on May 7, 1976, less than two weeks later, before the completion of the Course. Perhaps more importantly he did not advise the Board of Directors of the doubtful value of the Course to Kim's parents as was indicated by testimony upon the Inquiry. This paragraph of his report was the further result of selective comment by Mr. Lovatt.

Mr. Lovatt's next paragraph was at least misleading if not utterly false. He told the Board that Annals Popen and Jennifer Popen "had co-operated in every way" with the Society and the probation officer.

They may have co-operated with the probation officer, but Annals Popen was bound by an order of the Court; so, to that extent, his "co-operation" should not have been a factor.

"Co-operation" with the Society was not apparent from August 31, 1975 until mid-February 1976 when the Crown Attorney accepted the proposal put forward by Mr. Higgins. Until then Mr. Carter had been unable to carry out normal casework. Even in his own report of December 15, 1977 Mr. Lovatt had noted, without identifying the source, the caution to the Society not to talk to Annals Popen and Jennifer Popen. Mrs. Harvey, in her report of December 8, 1977, referred to the sanctions imposed by Mr. Higgins. She also wrote of Jennifer Popen's being "resistent (sic) to Mr. Carter's efforts to help her" and being suspected of lying to Mr. Carter. That hardly merits Mr. Lovatt's fulsome expression of their co-operation with the Society in every way.

The next statement in Mr. Lovatt's report was probably essentially correct. It was that Annals Popen had stopped drinking and had attended Alcoholics Anonymous.

The next statement by Mr. Lovatt was misleading at least and probably greatly in error. He said:

> "Kim would be returned to her parents at the Aug. 4, 1976 Court Hearing because of lack of evidence to refute this action from taking place."

That was an amazing confession. The only hearing scheduled for the Court on August 4, 1976 in respect of Kim was the Society's application for supervision of Kim in extension or variation of the Order made on February 25, 1976 which would ordinarily have expired after August 24, 1976. Mrs. Harvey and Mrs. Lo must have felt that at least such a supervisory order, if not a continuation of wardship, was appropriate. Otherwise they would not have decided to bring the application rather than merely applying for an order terminating the Order of February 25, 1976 before August 24, 1976.

Mr. Lovatt was at least presumptuous to state positively what Judge Nighswander would have done upon the Society's application originally presented on August 4, 1976 or upon any application for further consideration of the Order he had made on February 25, 1976. Mr. Lovatt completely overlooked the comments of Judge Nighswander, in his reasons for judgement on February 25, 1976, when he stated that Annals Popen would have to give evidence of having successfully coped with his problem with alcohol "before the Court will permit [Kim] to return to [her] parents."

In the light of that Mr. Lovatt has put himself in another situation of having to select one of two undesirable explanations for his statement. One explanation would be that Mrs. Harvey and Mrs. Lo were presenting a frivolous or inappropriate application to the Court on August 4, 1976. The other would be that the Society was taking upon itself the task of pre-judging the result and in so doing was assuming a result adverse to the Society and thereby was acknowledging insufficient preparation or gathering of evidence to support the application.

The next paragraph of Mr. Lovatt's report was another inappropriate statement of negative pre-determination of the Court's decision upon the Society's application on August 4, 1976. It was the blunt statement that, on August 4, 1976, the Court "would have terminated the wardship." Judge Nighswander's judgement hardly supports the certainty of that result.

Mr. Lovatt then stated that the Society made the decision to return Kim to her parents "based on all the best evidence available at the time."

That simply does not stand up to the scrutiny of the Inquiry. Upon the Inquiry Mrs. Harvey sought to defend her decision which had been made as early as February, 1976. She stood in lonely, pitiful isolation. No witness who had any training, knowledge or expertise in dealing with cases of child abuse agreed with her. My memory is that none could find any factor which would have supported a decision at that time to return Kim to her parents.

In my view, simply put, Mr. Lovatt was seeking to mislead the Board of Directors. I am satisfied that "the best evidence available at the time" did not support Mrs. Harvey's decision which, by reason of the organization of the Society created or permitted by Mr. Lovatt, became the Society's decision.

Mr. Lovatt did not advise the Board that Mr. Carter and Mrs. Kirby of the Society's staff and Police Constable Wyville had strongly expressed opposition to Mrs. Harvey's position, stated in February, 1976, that Kim would be returned to her parents.

The closing sentence of Mr. Lovatt's statement to the Board of Directors, as recorded in the minutes of the meeting, was not open to argument or doubt. He said:

> "That decision [to return Kim] proved to have unfortunate consequences."

The consequence for Kim was disastrous. She died.

The consequences for Mr. Lovatt were disastrous. His incompetence and inadequacies as the Local Director of the Society were revealed.

The consequences for Mrs. Harvey were disastrous. Her insistence upon forcing her will on others overtook her. She was shown to have made a grievous error. Her inadequacy as a Supervisor of the Society was revealed.

The consequences for the Society, its staff and its clients were disastrous. The reputation of the Society, whatever it may have been previously, was diminished. That would affect the lives and careers of its staff. Those effects would impair the ability of the staff to continue to serve its clients. That was part of the situation Mr. Zwerver came upon in March, 1978.

What I have written is a harsh statement in respect of Mr. Lovatt. It is unfortunate that it had to be made.

In part it came because of his faith in, dependence upon and loyalty to Mrs. Harvey. It need not have been made if he had been more assertive, more aggresive and more effective as the Local Director of the Society.

In part it came because he chose, in effect, to permit the management of the most serious case of child abuse in the Society in his memory to proceed with virtually no contribution of knowledge or expertise from him and with virtually no supervision by him. Even Mr. Lovatt as he testified rued his own shortcomings in respect of Kim and her tragedy.

All of that reflects the personal disaster that overtook Mr. Lovatt despite all of his interest in the work and aims of the Society.

His failure to advise the Board of Directors of the Society of the impending storm which might have been expected to assail the Society after Kim's death is not in any way attributable to Mr. Lovatt's interest in his work. His stated reason for not advising the Board is shallow.

I do not accept that any concern for any limitation of discussion, which he suggested came about because Annals Popen and Jennifer Popen had been charged with manslaughter, led him to remain silent. I can only infer that he did not advise the Board of Directors because he hoped that whatever did develop would not involve the Society and that the failures of the Society, and thus of himself, would remain concealed.

That would have been the case except for some statements upon the actions of the Society made unexpectedly during, but not as part of the trial of Annals Popen and Jennifer Popen in December, 1977. From August 11, 1976 until December, 1977 no one had publicly connected Kim's death with any possible mismanagement by the Society.

Even when the matter was first raised Mr. Lovatt did not become an aggresive and effective Local Director of the Society. Instead of beginning an investigation within the Society to determine what had occurred in Kim's case he merely asked Mrs. Harvey to prepare a report for the Child Welfare Branch and he spoke by telephone with Mr. Charko.

There was no testimony to suggest that when the matter became of public interest Mr. Lovatt took any positive step. He did not even telephone Mr. Allen, the then President of the Society, to give him any advice or information about what was happening or had happened.

His report to the Board of Directors was really a pathetic effort. It was incomplete and misleading.

In light of his own testimony as to his preparation of another report for a meeting of the Board of Directors, one can only wonder how much time and effort he put into preparing for that special meeting of the Board of Directors. The result, as revealed upon the Inquiry, would suggest that the time at least might have approximated the few minutes he spent in preparing for a committee meeting and a meeting of the Board of Directors on the day he outlined during his testimony upon the Inquiry as a typical day of his duties.

Beneath the incompetence and inadequacy that would permit Mr. Lovatt to remain silent from August, 1976 until December, 1977 and then to produce such an incomplete and misleading report for those whom he knew relied upon him, there must be another facet of Mr. Lovatt.

Perhaps it was pride which prevented him from acknowledging that the Society and he might be criticized for the management of Kim's case and from acknowledging that such criticism might be valid.

Perhaps it was fear that his position and employment might be uncertain if his performance were closely and critically examined.

Whatever the reason, Mr. Lovatt's failure to advise the Board of Directors of the possible consequences to the Society of Kim's death was nothing less than a dereliction of his duty to the Society and to its Board of Directors. That dereliction began in August, 1976 and continued until December, 1977 when it was compounded by an inaccurate and misleading report to the Board of Directors. Even in December, 1977 Mr. Lovatt did not face the reality of what had happened.

In December, 1977, if Mr. Lovatt had personally investigated the handling of Kim's case by the Society, he should have been able to detect many of the matters mentioned by the Farina Committee and by Mr. Zwerver in their respective reports to the Board of Directors and testimony upon the Inquiry.

He should have seen the discrepancies between various documents mentioned by the Farina Committee. Some discrepancies were within the Society's own records and documents. Some were between the Society's records and those of the Sarnia Police Force.

He should have seen the inadequacies within the Society. It lacked appropriate policies and procedures. Even the procedures which Mr. Lovatt and Mrs. Harvey described as being well-known within the Society were not followed.

He should have seen that something was seriously amiss between June 17, 1975 and August 31, 1975. It is disturbing to contemplate that, if Kim had died on August 31, 1975, the entire deficiency of the Society might not have been revealed.

He should have seen that from August 31, 1975 until February, 1976 the Society was not fulfilling all of its duties. The Children's Services Department was ensuring Kim's physical safety and well-being. The Family Services Department was virtually dormant and whatever little it did do it did poorly.

He should have seen that Mrs. Harvey and Mr. Carter were unable or unwilling to deal effectively with the matter.

He should have seen that the preparation for hearings in Court was not satisfactory.

He should have seen that the presentation of the Society's application to the Court was inadequate.

He should have seen the problems and frictions between the two departments of the Society and Mrs. Harvey's virtual autocracy. In fact he did testify that he was aware of them and had tried to resolve them. The futility of any such attempt was apparent from the testimony upon the Inquiry.

He should have seen that the transfer of Kim's case from Mr. Carter to Mrs. Lo was not conducted in keeping with reasonable and usual practices, practices which he said were well known even within the Society. That comment applies not only to the transfer itself, but also to the more basic decisions, firstly that Mr. Carter should be relieved and secondly that the case should be assigned to Mrs. Lo.

He should have seen that the decision to return Kim to her parents was not reached in keeping with reasonable and usual practices.

He should have seen that that decision was not an appropriate decision and that it was made by Mrs. Harvey alone and was subsequently forced upon others who were left to determine the subsidiary issue as to when that decision should be implemented.

He should have seen that Mrs. Lo's supervision of Kim's care was not satisfactory.

He testified that he

> "had been led to believe that the child [Kim] was being medically seen."

So far as the Society was aware, Kim was not "medically seen" between May 27, 1976 and her death. The records of the Society and the testimony upon the Inquiry do not suggest otherwise.

He said he had had some concern about Mrs. Lo's ability to handle Kim's case and had obtained Mrs. Harvey's undertaking to supervise Mrs. Lo closely. His attention was directed towards Mrs. Lo, but he could not or would not recognize the problems.

He should have noticed the lack of appropriate communication between the Society and other provincial and local authorities or agencies involved with the Popen family.

He should have learned that people within and without the Society had expressed opposition to Mrs. Harvey's statement in February, 1976 that Kim would be returned to her home.

None of these matters was mentioned by Mr. Lovatt to the Board of Directors. Mr. Lovatt's report could very well have led the Board of Directors to believe that the Society and its personnel had attended to Kim's case in an entirely acceptable fashion and that there was no cause for concern about any criticism of the Society that might be voiced.

That latter view is enhanced when one notes that Mr. Lovatt's report to the Board of Directors concluded with three recommendations, written in the minutes of the meeting as follows:

> "(a) That a formal reporting system in cases of child abuse be established between the C.A.S., Lambton Health Unit, and the Probation Services.
>
> (b) In cases of child abuse, the children can no longer be returned to parents without Court involvement.
>
> (c) That we require Medical examination and report every two weeks where C.A.S. has supervision of 'at risk' child. Failure to do so should compel a return to Court."

Even those recommendations do not address the basic problems of the Society which were disclosed by Kim's case.

There is no mention of the lack of appropriate policies and procedures within the Society.

There is no mention of the inadequacies of some of the personnel of the Society.

There is no mention of dissension between the two departments of the Society.

There is no mention of any problems of the staffing or finances of the Society.

The first recommendation is really a damp squib. It suggests the establishment of a formal reporting system among the Society and two other bodies, The Lambton Health Unit and Probation Services. That did not include the police forces, the school or education authorities, the hospitals, the medical profession and others who might from time to time be the first to observe some symptom of possible child abuse. Nor did it go beyond a "formal reporting system" and include the need for ongoing consultation and co-operation amongst all concerned.

Even more devastating to Mr. Lovatt's position as Local Director of the Society is the uncomplicated question "If Mr. Lovatt saw fit to make any recommendations in December 1977, as a result of Kim's death, why had he not done so earlier, perhaps in August or September 1976, when Kim's death first came to his attention?"

There was no testimony that Kim's death stirred Mr. Lovatt to any action until December, 1977. Even then it was not her death, but the publicity resulting from it, which led to his recommendations to the Board of Directors.

There was no testimony that he attempted at any time to implement any of the three recommendations he made in December, 1977. The last two at least were entirely within the control of the Society.

That uncomplicated question cannot be directly answered on the basis of the testimony upon the Inquiry. The answer is with Mr. Lovatt. By reason of the particular circumstances of the Society it also is with Mrs. Harvey.

Mr. Lovatt bears the ultimate responsibility for the conditions within the Society which contributed to Kim's death.

He also bears the ultimate responsibility for the failure of the Society to take any steps to correct the deficiencies of the organization, administration and operation of the Society. Insofar as Kim's case is concerned the existence of those deficiencies was revealed initially on and immediately after June 17, 1975, again immediately after August 31, 1975 and until August 11, 1976 and then finally on August 11, 1976 when Kim died.

None of that revelation of deficiencies was enough to stir Mr. Lovatt to deal with them. Presumably he was content to deal with the myriad of minute, picayune and menial tasks which absorbed his time and interest on the typical day he described.

Mr. Lovatt did state in his testimony that Mrs. Harvey had been working to prepare procedures for the Society to use in the handling of cases of child abuse. He said she was so engaged for some time prior to December, 1977. There was no testimony to indicate how far Mrs. Harvey had proceeded at any time. Clearly nothing was accomplished to the extent that it could be shown to the Farina Committee, in February, 1978, and to Mr. Zwerver, in March, 1978, as a document representing the policies and procedures of the Society. Not even a draft of such a document was produced to the Farina Committee, Mr. Zwerver or the Inquiry.

In that regard too it must be remembered that, in July, 1976, the Ontario Association of Children's Aid Societies had published the lengthy document entitled "Guidelines for Practice and Procedure in Handling Cases of Child Abuse" which was filed as an exhibit upon the Inquiry. Mr. Lovatt testified that the Society received its copies of that pamphlet in August, 1976 after Kim's death.

I have read that pamphlet. I note particularly that the compilers of the guidelines requested the children's aid societies to review them and to test and modify them in the hope that, upon the basis of the societies' reported experience with them, the guidelines might then be suitably amended. There was no testimony that the Society in anyway applied or commented upon that initial set of guidelines.

There are other aspects of Mr. Lovatt's performance of his duties, apart from those directly touching upon Kim's case and which I have already mentioned, which I wish to discuss.

I wish firstly to consider Mr. Lovatt's duties, as Local Director of the Society, to the Board of Directors of the Society and thus to the Society, its staff and its clients.

Section 4 of The Child Welfare Act requires every children's aid society to appoint a local director and it imposes responsibility upon anyone so appointed. The local director of a children's aid society is responsible to the board of directors of the society for the administration and enforcement of The Child Welfare Act and the regulations made thereunder. The local director of a children's aid society must co-operate to that end with the Director appointed for the purposes of that Act. The local director of a children's aid society must also carry out other duties as are required by the society.

In Chapter XVII of the Report I have examined the role of the Board of Directors of the Society as it related to Kim's case. Until December, 1977 the Board of Directors was essentially unaware of Kim's case. In August, 1976 Mrs. Harvey had told Mr. Allen, the then President of the Society, of Kim's death. He was led to believe that Kim had died as the result of an accident. He did not react in any way to Mrs. Harvey's message. For all practical purposes, until December, 1977, the Board of Directors knew nothing about the management or mismanagement of Kim's case and they were no more aware of it than they were of any case within the Society.

The Board of Directors of the Society was composed of lay persons who had no particular knowledge of or experience or expertise in social work or child welfare. They were entirely dependent upon Mr. Lovatt for guidance in their discussions and decisions. Mr. Lovatt was aware of their dependence upon him. I am satisfied that such a relationship is usual and accepted between a board of directors of a children's aid society and its local director.

In his testimony upon the Inquiry during which he described some of the things he did, Mr. Lovatt was, in a sense, complaining that too much was demanded of him. But yet Mrs. Woods testified as to his reaction to her efforts to relieve him of the relatively minor task of calling a meeting of one of the committees of the Board of Directors. Mr. Lovatt did not appreciate her effort and seemed almost to resent it as an intrusion upon his domain. As a result Mr. Lovatt was left with such simple or mundane tasks.

That was but an example of what I noted throughout Mr. Lovatt's testimony. He did a number of things which others could and should have done and would have done if required or requested to do. At the same time be neglected a number of duties which, I am satisfied on the testimony of expert witnesses, he should have been performing.

Even as he testified as to his workload he gave considerable detail about moving the typewriter, loading the crib and servicing the automobile, but he gave virtually no detail of what he did in those broader more important areas of his responsibility. He spoke of meetings with managerial staff, of time spent planning development of the Society and the use of personnel, of time spent on the relationship of the Society with other children's aid societies, of time spent in community work and of time spent in consultative meetings. He gave no details of any of the matters involved in such efforts.

I was left to wonder what plans he might have had for the development of the Society. At the same time I wonder what subjects were discussed in managerial meetings and consultative meetings and what he did to further the Society's position in the community and with other children's aid societies.

Frankly I am not satisfied that Mr. Lovatt had any plans whatsoever for the development of the Society in the sense that development meant improvement in the quantity or quality of services provided by the Society or the addition of other services not previously provided.

Similarly I am not satisfied that anything of significance was involved in managerial meetings or consultative meetings or in planning the use of staff. In Kim's case Mrs. Harvey to all intents and purposes merely advised Mr. Lovatt of what she had done and he accepted it.

On the basis of Mr. Zwerver's testimony as to the opinion of the Society held by others participating in the operation of the child abuse clinic, I am satisfied that Mr. Lovatt was not very successful in what he categorized as "community work." Certainly he spent time dealing with others, but the results were not very gratifying. The sad part is that Mr. Lovatt did not seem to realize what was occurring all about him. But he should have.

The same remarks apply to the matters of the relationship of the Society with other children's aid societies. Again, Mr. Zwerver spoke of the reputation of the Society among social workers at various meetings he attended. It was not a high opinion. And again Mr. Lovatt did not realize it, but he should have.

From the testimony upon the Inquiry, particularly that of the members of the Farina Committee and Mr. Zwerver, I am satisfied that Mr. Lovatt did not fulfill his obligation and responsibility to assist the Board of Directors of the Society in the performance of its duties.

At least two of the persons who were or had been members of the Board of Directors and who testified upon the Inquiry expressed a particular interest in the financial affairs of the Society. That was Mr. Wryzykowski's main interest and Mr. Higgins felt a duty to oversee the expenditure of public money. Mrs. Woods testified that the representatives of the municipal councils upon the Board of Directors felt a similar duty.

Mr. Zwerver reported to the Board of Directors upon a number of matters which he regarded as deficiencies in the organization and functioning of the Board. I have already dealt with Mr. Zwerver's comments upon the absence of adequately functioning committees of the Board of Directors and the effect thereof. Mr. Zwerver received the full co-operation of the Board of Directors in correcting that matter when they were informed of the problem.

Mr. Lovatt testified that he accepted that criticism expressed by Mr. Zwerver. He believed it to be a valid criticism and he agreed with the steps taken to correct the situation.

It was criticism that Mr. Lovatt should have expressed to the Board of Directors long before March, 1978. He had not done so. They were corrective measures he should have taken long before March, 1978. He had not done so.

I am satisfied that during Kim's lifetime the organization and functioning of the Board of Directors was as deficient as Mr. Zwerver found it to be in March, 1978. If Mr. Lovatt could accept and agree with Mr. Zwerver's criticisms and remedial actions there is no reason to believe that, in 1975 and 1976, he was not equally aware of the deficiency. If he was not aware, he should have been. In any event Mr. Lovatt provided no guidance to the Board of Directors to correct the unsatisfactory condition. It was another example of his incompetence or ineptitude.

Secondly I want to examine the various aspects of Mr. Lovatt's activities as they affected or were governed by the relationship of the Society with the Ministry.

In Chapter XXVI I examine the role of the Ministry in Kim's life. It was an indirect role, but there were several different facets to the relationship of the Ministry and the Society. In Chapter XXVI I comment upon the financial areas of the relationship. The Ministry was obliged to provide funds to the Society and about eighty per cent. of the Society's annual income was provided through the Ministry.

The Ministry had a great interest in the financial affairs of the Society and exercised considerable control upon them. This began with an elaborate procedure for the minute examination of the Society's proposals for the expenditure of funds. It entailed application of arbitrary restraints upon expenditures. A vast number of directives and memoranda flowed from the Ministry to the Society in respect of financial matters. Only if and when the Society's proposed budget was approved by the

Ministry, after amendment to satisfy the Ministry, would the Ministry commit itself to provide funds. It was often times a long and tedious process, begun late in one year in respect of the coming year and often not completed until late in the current year, several months after the process began and several months into the year which was in question.

If the Ministry was very interested in the financial affairs of the Society and spent much time and effort thereon it found a willing and like minded associate in Mr. Lovatt. At the expense of a proper performance of other duties he spent an inordinate amount of time upon the budgetary and fiscal affairs of the Society.

I am satisfied that any financial problems the Society underwent during Kim's lifetime did not directly affect her and her life and her death. I am unable to form any definite opinion as to anything that may have flowed from the financial matters to have had even an indirect or intangible effect thereon.

Mr. Zwerver spoke of problems of morale among the personnel of the Society. He spoke of beliefs of the staff that they were working more than was indicated by the records maintained by the Society. All of that may have, intangibly and indirectly, had some effect upon the Society's performance of its responsibility in relation to Kim. There was no testimony to indicate any such effect.

There was testimony also of different theories as to the management of child welfare. One theory seemed to favour apprehension or removal of the child from the problem home. Another seemed to favour leaving the family together, or at least returning the child to it quickly. Again there was no testimony to indicate that financial or budgetary matters played any part in the selection of any theory for the management of Kim's case.

Be that as it may Mr. Lovatt presented himself to the Inquiry as a man plagued by the problems of managing the Society without adequate resources. He said that the years of Kim's life presented his greatest difficulties in that regard.

Mr. Lovatt was Local Director of the Society during nine financial years. In seven of those years the Society incurred a deficit, the greatest being about $51,000.00 in 1975. In two years, 1969 and 1977, the Society enjoyed a surplus.

There was considerable testimony upon the Inquiry as to the difficulties which the Society and Mr. Lovatt encountered in securing the Ministry's approval of the Society's proposed budget for the year 1976. I shall deal with that testimony now and then shall attempt to compare or contrast the events surrounding the Society's budget for the year 1976 with or to those surrounding the Society's budget for the year 1978. That comparison or contrast will provide a basis for assessment of Mr. Lovatt's competence or ability to deal with the Society's budgetary and financial affairs.

The distinctive problems surrounding the Society's budget for 1976 had their genesis in a meeting convened by the then Minister, The Honourable James Taylor, Q.C., and held in Toronto on December 18, 1975. It was attended by local directors and presidents of children's aid societies.

Representatives of the Ministry advised those present that financial restraints were to be imposed upon children's aid societies. The effect of the restraints was intended to limit any increase in the expenditure of each society to an amount equal to 5.5% of its expenditures as shown in its budget for the year 1975 approved by the Ministry.

Of particular concern to the Society was the further statement that no assurance could be given that any deficit incurred by a society in its 1975 operation would be approved by the Ministry so as to enable the amount of any such deficit incurred by the Society to be paid to the Society by the Ministry, the City of Sarnia and the County of Lambton.

That particular concern of the Society arose from the fact that in its 1975 operations it incurred a deficit of $50,787.40.

I am sympathetic to Mr. Lovatt's concern. The Society's budget for 1975 had been $567,067.00.

With the amount of the deficit the Society's expenditures in 1975 were $617,854.40. The Ministry's stated position was that it would approve the Society's proposed budget for 1976 provided it was not more than 105.5% of the approved budget for 1975. There was no assurance that the Ministry would approve the deficit incurred by the Society in 1975. Thus the Ministry was proposing to approve of expenditures in 1976, exclusive of the deficit from 1975, in the amount of $547,468.29 whereas the Society's actual expenditures in 1975 had been $617,854.40. Presumably too any such approved budget would have to provide for payment by the Society of its deficit for the year 1975.

The dilemma for Mr. Lovatt might be presented in tabular form as follows:

	1975	1976
Approved budget expenditures 1975	$567,067.00	$567,067.00
Add 5.5% for 1976		31,188.69
Deficit incurred	50,787.40	
	$617,854.40	$598,255.69
Less retirement 1975 deficit		50,787.40
Funds available for current year	$617,854.40	$547,468.29

As initially presented, the Ministry's proposal would have left the Society, after retirement of the 1975 deficit, with funds available for 1976 expenditures about $70,000.00 less than were actually spent in 1975 and about $20,000.00 less than the approved budget for 1975.

In the light of all circumstances that position taken by the Ministry would be devastating to Mr. Lovatt and the Society.

Mr. Taylor addressed the meeting and explained the attitude of the Ministry as to how the various societies might curtail their expenditures. The Ministry did not intend to direct specific reductions, but expected the societies "[would] make selective cuts in order to preserve the present level of service supplied." The Ministry felt that the societies and the Ministry together must make the decisions "taking into account local variance and needs."

Those remarks by Mr. Taylor must be assessed in the context of a memorandum dated December 16, 1975 and signed by Mr. Macdonald as Director, Children's Service Bureau of the Ministry. The memorandum was sent to all children's aid societies in Ontario for consideration in connection with the preparation of their budgets for 1976.

In that memorandum Mr. Macdonald recognized the difficulties which the Ministry's restraint would create for the societies. He recognized that "any detailed set of definitive guidelines [would] have a differential impact on the individual Children's Aid Societies." He sought the advice and assistance of the societies in preparing a set of guidelines

> "designed to ensure that the child welfare system lives within the overall guideline with the least possible disruption of current planning and service levels."

Mr. Macdonald then set forth in his memorandum a number of tentative guidelines for discussion and consideration for inclusion in the guidelines to be made applicable to all societies.

The minutes of a meeting of the Board of Directors of the Society held on January 6, 1976 disclose that, at that meeting, Mr. Lovatt reported upon his attendance at the meeting on December 18, 1975. His report appears to have been fairly accurate.

At that meeting a decision was made to approach the Member of the Legislative Assembly representing one of the constituencies containing the City of Sarnia and the County of Lambton. The purpose of that approach was to enlist his support in seeking relief from the rigid application of the Ministry's proposed restraint. The basis of the request was that the Society had increased costs because of an increase in the number of children in its care. In the end that approach failed when

Mr. Taylor refused the submission on behalf of the Society.

Nowhere in the testimony or the many documents produced as exhibits upon the Inquiry is there any indication that Mr. Lovatt advised or reminded the Board of Directors of the Society or that the Board of Directors was otherwise aware of the provision of section 11 of The Child Welfare Act which enabled a children's aid society to contest the proposed decision of the Minister to approve the Society's proposed budget in an amount less than set forth in that budget.

It is impossible to know what might have happened had the Society chosen to make the necessary request under section 11 of The Child Welfare Act. It may very well be that it would have been a fruitless effort, but, in my view, it was a possible course of action of which the Board of Directors should have been aware. It was for them, fully informed, to decide whether or not to take that course. Mr. Lovatt was remiss in his duty as Local Director. He should have informed the Board of Directors of the statutory provision. He did not.

There were other memoranda from Mr. Macdonald to the Society after December 18, 1975. They too related to preparation of the 1976 budget.

In the end, as a result of further negotiations between the Ministry and the Society, the Society's budget for 1976 was approved in the amount of $688,336.00 including the provision for retirement of the deficit from 1975. The initial estimate presented to the Ministry in November, 1975 had been in the amount of $716,160.00. The final result was that the Society had an approved budget for expenditure of about $637,549.00 on current matters in 1976, compared with an approved budget in the amount of $567,067.00 in 1975 when $617,854.40 was actually spent or incurred.

Mr. Lovatt in his testimony upon the Inquiry stated that the Society was the victim of his integrity in the matter of statistics and thus in the matter of portions of its budget in each year. The crux of that complaint, as I understood it, was that the Ministry's approach to approval of budgets of children's aid societies was based on the number of matters that were assigned particular designations by the societies.

He suggested that some of the societies would give to a matter a designation which merited a greater allotment of time, money and personnel whereas other societies would give to a matter, identical to the other for all practical purposes, a different designation meriting a lesser allotment of time, money and personnel. He said that as Local Director of the Society he complied with the directives from the Ministry as to the designations to be given to various matters and, as a result, the Society received less funding than other societies which did not comply.

There was other testimony which might seem to support Mr. Lovatt's view. That testimony related to efforts, even in the Society, to place or maintain matters in certain positions upon the days as of which statistical reports to the Ministry were prepared.

Mr. Macdonald in his testimony denied that the Society suffered because of Mr. Lovatt's decisions as to the designation to be given to any matter. Mr. Macdonald said that, in assessing each society's budget submissions, the Ministry had regard only to the criteria applied by that society in past years and in the current year. He said that no society's requirements were measured in any way in relation to or by material submitted by other societies.

Mr. Macdonald acknowledged that a society's submission might be misunderstood if the society itself changed its criteria. However, if the society advised the Ministry of its changed criteria there would be no difficulty because the Ministry, in comparing the current submission with that of an earlier year, would apply the new criteria to the facts of the earlier year and thus obtain a proper basis for comparison. Even if the society did not advise the Ministry of any change of criteria it was likely that, if the change were causing substantial variations, the Ministry would observe the apparent abnormality and request and receive an appropriate explanation.

I prefer Mr. Macdonald's testimony to that of Mr. Lovatt in that regard. The position of the Society, in relation to ministerial approval of its budgets and the consequent provision of funds to satisfy the approved budgets, was not less favourable to the Society because it placed some matters in categories different from those in which other societies might have placed such matters.

I restrict that finding so that it relates only to years, such as 1976, in respect of which the Ministry sought to impose arbitrary restraints measured only in relation to some predetermined matter, such as the budget for a preceding year.

In other respects I am satisfied that the position of any children's aid society in relation to any other society could be and was affected by the way in which its records were kept and its budget prepared and presented. In saying that I do not suggest that any society was dishonest or, in effect, cheated other societies by employing improper methods of recording and reporting its activities.

Mr. Macdonald acknowledged that fact when he testified as to the Ministry's analysis of the budget proposals for the year 1977 and its attempts then

> "to be as equitable as possible and to use the guidelines that [it] had to provide the best possible distribution of money."

I am satisfied that such analysis and attempts to achieve an equitable distribution of funds among the societies entailed a comparison of each society with one or more of the others. Mr. Macdonald had testified that in respect of the 1977 budget proposals the Ministry abandoned its efforts to control budgets by imposing limits such as a fixed percentage of the prior year's budgets which it attempted in relation to estimates for the year 1976. He said the Ministry sought to impose controls as severe as those attempted in respect of 1976 budgets, but, in respect of the 1977 budget proposals, the Ministry sought "to take a more rational approach to each individual budget."

In my view it would then be the responsibility of the local director of each children's aid society to prepare the budget of his or her society and to employ, as favourably as possible to the society, the material available from the files and records of the society maintained in keeping with the requirements and standards, if any, of the Ministry. Conversely, it would be the Ministry's responsibility to every other society to ensure that the files and records of the society whose budget was being considered were maintained as required by the Ministry.

I am supported in that opinion by the testimony which related to the procedure entailed in obtaining the Minister's approval of the Society's budget for 1978. That demonstrated to my satisfaction that two local directors preparing and presenting a budget in respect of one children's aid society could achieve quite different results. Both would have stayed within the proper limits imposed by the Ministry. The one who achieved the better results would simply have better utilized the information available from the files and records of the society. The one who achieved the poorer results made the poorer use of the same information.

Mr. Lovatt testified that for some years prior to 1978 he had been concerned about the levels of staffing and financing of the Society. Some of the exhibits produced upon the Inquiry support his testimony.

I am satisfied that Mr. Lovatt did have those concerns. The oral testimony and exhibits upon the Inquiry satisfy me that those concerns were valid. Mr. Lovatt's failure was his inability, in almost every instance when he tried to do so, to demonstrate that his concerns were well-founded.

Mr. Lovatt testified that, even before his appointment as Local Director of the Society in 1968, the Society had had expenditures much lower than other comparable societies. The amount of monies payable by the Ministry to a society was, for most practical purposes, directly related to its approved expenditures.

One of Mr. Lovatt's efforts to correct that perceived disparity between the funds provided for the Society and those provided for other societies occurred in December, 1974 in the preliminary stages of consideration of the Society's proposed budget for the year 1975.

He wrote to Mr. Macdonald explaining some of the reasons for differences between the estimates of certain items for 1975 from those for 1974.

The final two paragraphs were in the nature of general comment upon the anticipated financial needs of the Society and upon the anticipated increase of the need for its services. He wrote as follows:

> "This agency is very much aware of just how far we are behind in level of financing. The enclosed figures, taken from recent O.A.C.A.S. communications, show that, in comparison to all other societies serving populations between 90 and 130,000, our 1973 actual was $102,000 below the next lowest and our 1974 Budget Estimate was again $86,000 lower. Realistically, therefore, we do not expect opposition to our modest 1975 increase, which represents an increase of only 14% over 1974 estimated actual.
>
> You may be aware that Lambton County is facing a tremendous increase in population following the expansion in the chemical industry. The increase is predicted to start in the Spring of 1975 and could reach a total of 54,000 more people by 1980. These figures are taken from official municipal planning department reports. We are therefore developing a brief to submit to you on our plans for expanding staff and facilities to deal with this expected increase, for inclusion in the 5 year forecast commencing 1976."

The "enclosed figures" he mentioned were as follows:

Societies covering population of 90 - 130,000

	Pop.	Staff	Actual 1973	1974 Estimate
Algoma	110	30	$686,043	741,640
Brant	99	40	$820,946	998,173
Frontenac	100	41	$572,711	630,638
Hamilton RC	115	48	$1,023,274	1,242,050
Hastings	97	35	$582,920	657,113
Kent	99	25	$542,886	570,269
Lambton	112	23	$441,499	484,257
Stormont	97	22	$580,587	628,312
Wellington	113	40	$728,710	811,902

Mr. Lovatt testified that this and other efforts by discussion with Mr. Charko failed. He said the Ministry's position, as expressed to him, was that comparisons of children's aid societies could not be based solely upon the size of the population served by each.

I accept Mr. Lovatt's testimony in this area. But that letter of December 17, 1974 is an example of what might have been expected of Mr. Lovatt bearing in mind the very little time which, on his own testimony, he spent upon hastily preparing reports and material for the Board of Directors of the Society and its committees.

He knew that the Ministry recognized that size of population served was not the only factor to measure the needs of the Society. His own testimony was that officials of the Ministry stated to him that the needs of the societies varied and that geographic area and population served were not the sole determinants of a society's needs. He also said that his efforts to persuade the Ministry as to the Society's needs were futile.

There was no testimony that that caused him to set about preparing more and better material to try to persuade the Ministry as to the needs of the Society. From the testimony upon the Inquiry it would seem that there were several other factors that might have been considered. They would include demographic information sufficient to reflect the number of births, the ages and sex of children in the community, changes in the size of population and the rate of change, the nature of industrial and other employment, unemployment figures, any particular ethnic or cultural consideration, the incidence of conditions such as alcoholism or emotional or mental illnesses which might affect demands upon the Society, the presence or absence of facilities to enable the Society to treat cases coming to its attention, the availability of foster homes and the location of centres of population within the County of Lambton and the location of the Society's offices and other facilities in relation to those centres of population.

He might also have supported his claim by including, if they were then available, comments such as were made by Judge Kent to Mr. Zwerver criticising the Society's conduct of court matters. That might have removed any supposed objection to the Society's expenditure of funds to obtain legal services.

In that last matter I am not satisfied that the Ministry refused any properly presented request for provision of funds for legal services. I am satisfied that most children's aid societies do avail themselves of such services and not, as the Society did in 1976, by encroaching up the Society's private funds not subject to external budgetary controls. I am not satisfied that the Society even sought to have a provision for legal services included in its budget.

Mr. Lovatt was responsible for no such provisions having been made in 1975 and 1976. That had no particular bearing upon the finalization of the court proceedings in respect of Kim. At the meeting of the Board of Directors of the Society on January 6, 1976 the Board of Directors made the sum of $2,500.00 available to Mr. Lovatt to obtain legal assistance "in his judgement".

The trial of the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act was held on February 23, 1976 and, subject only to imposition of sentence, it was completed that day. The Society's application in respect of Kim was heard on February 25, 1976.

There was no testimony that Mr. Lovatt exercised his "judgement" to seek legal assistance in respect of either the trial or the hearing or in respect of any of the ramifications of Kim's case, such as the restriction upon Mr. Carter's activities imposed by Mr. Higgins and accepted by Mrs. Harvey and Mr. Carter. I am satisfied he did not seek any legal advice in respect of any matter relating to Kim during her lifetime.

Mr. Lovatt is responsible for any harm that may have befallen Kim because the Society did not obtain any necessary legal service. That responsibility existed even before January 6, 1976, but its existence is clearly identified by the action of the Board of Directors of the Society on that date.

That action was taken by the Board of Directors after, as recorded in the minutes of the meeting,

> "Mrs. Harvey advised that, due to restraints, the agency was not allowed to hire a lawyer and since they had been involved in some cases of child abuse they felt the need of legal assistance."

Thus Mr. Lovatt was aware that the staff of the Society felt some need for legal assistance in relation to "some cases of child abuse." He also knew that, if not the sole such case then current within the Society, Kim's was the most serious and was one in which a solicitor acting for the parents was effectively preventing the Society from performing some of its duties. But he made no inquiry to determine if he should exercise his "judgement" and authorize the expenditure of funds for legal services.

That was another example of Mr. Lovatt's failure to fulfill what was reasonably expected of him.

I cannot imagine any case more deserving of at least consideration as meriting an exercise of Mr. Lovatt's judgement that legal advice and assistance to the Society were necessary and desirable so as to obtain a proper result.

Kim should have had that consideration. She did not receive it.

The Society should have obtained legal advice and assistance to try to enable it to fulfill its duties and obligations to Kim. It did not.

Mr. Lovatt is responsible for both of those failures.

I can infer only that if he thought about seeking legal advice, he decided against it. In any event he provided a further demonstration of his lack of qualifications for the position of Local Director of the Society.

In 1975 Mr. Lovatt was able to satisfy the Ministry as to the Society's need to enlarge its staff. He wrote to the Ministry on March 27, 1975 and enclosed a brief which had been approved by the Board of Directors of the Society. That brief did approach the problems of the Society by reference to several of the factors I have noted earlier.

It referred to the increasing age of children served by the Society and the consequent greater difficulties encountered, particularly in relation to foster homes and adoption.

It referred to the increasing need for service to unwed mothers and their children, in part because of an increase in public acceptance of those mothers keeping their children.

It included references to the municipal Planning Board's projections of growth of population and industry and the rate and time thereof with especial reference to the first wave of such growth being in construction. The brief suggested that construction workers were mobile and, for the Society at least, were a "high risk" population.

It referred to the special demands upon the Society for service to Indian Reserves, some of which were long distances from the City of Sarnia.

It referred to local centres of population outside of the City of Sarnia and their possible growth and thus the need for local offices of the Society to serve them in the future.

Statistical material was attached to the brief to show the Society's position in relation to several other societies in the matter of size of budget, size of population served, per capita cost, the apportionment of expenditures among child care, other services and administration and the ratios of children in care and society staff to population served. There were also some statistics comparing the caseloads and workloads within the Society in the years 1973 and 1974.

The brief stated that the material provided would establish the Society's need for another one and one-half social workers. In fact the Ministry authorized the employment of two. Two were employed by the Society in December, 1975. One was Mrs. Lo.

It would seem therefore that Mr. Lovatt's earlier efforts were unsuccessful because he had not prepared a proper base for his submission. When he had established that base by his submission in March, 1975 he received a favourable response from the Ministry.

The progress of the Society's budget for the year 1978, from preparation of the initial estimates by Mr. Lovatt in late 1977, through various presentations to the Ministry and the Ministry's denial of approval and then finally the preparation of a revised proposal by Mr. McCabe and Mr. Zwerver and its ultimate approval by the Ministry in mid-1978, was another demonstration of Mr. Lovatt's inability to deal effectively with the Society's budgetary and financial matters. That was so despite his interest in the subject matter and his professed and demonstrated abandonment of other responsibilities to apply himself to it.

Mr. Zwerver's report to the Board of Directors and his testimony upon the Inquiry was to the effect that in March, 1978 the staff of the Society complained about what they regarded as unduly large workloads and pressures. He said that was so even though the statistical material available within the Society indicated that the Society had a sufficient number of staff to meet the requirements of the caseload.

That latter observation by Mr. Zwerver draws attention to the second paragraph of the Society's brief sent to the Ministry with Mr. Lovatt's letter of March 27, 1975. That paragraph speaks of the Society's meeting "increasing demands with a relatively stable staff." It went on to say that "since the onset of inflation in early 1969" the Society, like other institutions in the public sector, was required to practice restraint and to rationalize its operation. It said the Society's staff had met that requirement "with innovation and dedication, but the limit has been reached." It continued then to give some statistical information. The concluding sentence is the most relevant to what Mr. Zwerver found in March, 1978. It was:

> "The caseload count of each month does not give an accurate picture of the actual workload."

There was no explanation of that statement to indicate in what way the "picture" was not accurate. Even in the face of that statement one of the appendices attached to the brief is entitled "Caseload Statistics 1973, 1974."

It seems a little unusual to present statistics supposedly in support of a submission and at the same time to acknowledge they "[do] not give an accurate picture" of what they are supposed to illustrate. In light of such a statement the statistics were meaningless and useless.

Mr. Lovatt had signed the Society's brief to the Ministry in March, 1975. He was then aware that there was something wrong or misleading in the records and statistics maintained by the Society. Even then he recognized that "the limit [had] been reached" by the staff. While he did obtain approval of the employment of two additional workers in 1975 he had permitted the same sort of situation to exist three years later in March, 1978.

There was no testimony that Mr. Lovatt made any effort to correct the internal system of the Society which led him to acknowledge that the statistics did not correctly illustrate the problem. Presumably the same unreliable system existed in 1978 when Mr. Zwerver arrived. All of that is another indication of Mr. Lovatt's incompetence or ineptitude.

Mr. Zwerver testified that he caused a "proper statistical system" to be established in the Society. From that system Mr. Zwerver soon obtained information which satisfied him that the staff of the Society was not sufficiently large to meet the actual demands upon it. The material placed into the new statistical system showed that the staff of the Society had been doing a much greater volume of work than the former statistical system had indicated.

On the basis of Mr. Zwerver's testimony and that of other witnesses I am satisfied that the establishment and maintenance of proper records and statistics and the ability to obtain accurate and appropriate information therefrom are as necessary to the successful operation of a children's aid society as they are to any other complex undertaking.

Accurate information is necessary to enable the administration or management of a children's aid society to establish a solid basis for its estimates of its needs in the future. Those needs might be for an enlarged staff or for the employment of persons with particular qualifications or skills. The needs might be for increased financial support.

There is no evidence to show when the Society had adopted the statistical system which Mr. Zwerver found in 1978. It may very well have been established even before Mr. Lovatt became Local Director of the Society in 1968. But he did continue to leave it unchanged for years after acknowledging its deficiencies.

In mitigation of this criticism of Mr. Lovatt, I acknowledge that one of the many abortive efforts of the Ministry involved work upon a Management Information System. The Society expended some effort in that work. It all went for nought.

That is of interest only because of Mr. Macdonald's testimony as to how the Ministry applied or used various forms of statistical information supplied by the societies. He said that information about "caseloads" had provided "a very rough general guideline" in relation to consideration of budget proposals. The Ministry was neither "scientific" nor "mathematical" in the application of that guideline, but sought to enable each society to maintain staff and facilities sufficient to meet the demands upon it. The absence of uniform or consistent terminology and definitions and interpretations thereof caused difficulties.

It was here that Mr. Macdonald explained that in budgeting matters the Ministry did not "extensively" compare one society with others in terms of case loads. The Ministry did however use the statistics provided by the individual society in prior years to assess its current needs. That was based on a belief that each society would be consistent in its own terminology, definitions and interpretations.

That became especially so in the years subsequent to 1975, the year preceding the Ministry's initial programme of restraint. Because of the introduction of restraints the Ministry decided to use the material and statistics of the year 1975 as a basis for assessment of each society's needs in subsequent years. The Ministry developed, for each society, a number of ratios involving the number of persons on its staff and the number of cases handled by it in the year 1975. Subsequent budget proposals and the corresponding ratios developed therefrom were measured against those of 1975. He said that that did not involve any comparison of the particular society with any other society.

It was against that background of the Ministry's procedures that Mr. Lovatt, in 1977, began the process of preparing and submitting estimates and a proposed budget for the year 1978.

On November 22, 1977 the Board of Directors approved the first budget document prepared by Mr. Lovatt for 1978. It showed that the Society estimated its expenditures in 1978 would be $821,500.00 as compared with its anticipated expenditure of $755,500.00 in 1977. That document, signed by Mr. Allen, President of the Society, and by Mr. Lovatt, was forwarded to the Ministry on November 29, 1977.

On January 12, 1978, the Ministry, over the signature of Edward Magder, Assistant Director, wrote to Mr. Allen, with a copy of the letter to Mr. Lovatt. Mr. Magder wrote that the Ministry had reviewed the document and had completed some calculations in accordance with the Ministry's previously published instructions relative to its preparation. He acknowledged that the Ministry's analysis was based only on the written submission and expressed a willingness to discuss the matter further if Mr. Allen wished to furnish any new information or to discuss the submission.

Mr. Magder wrote that the Society's workload projections were not supported by the Society's experience in 1977 and the trend over previous years. The Ministry estimated the total number of cases for 1978 at about 80% of the Society's estimate and then applied "the allowable 4% increase to [the Society's] 1977 actual expenditure."

In making its estimate of the Society's expected workload in 1978 the Ministry applied the ratios developed, as Mr. Macdonald explained, from the Society's actual experience in 1975. As a result the Ministry proposed the reduction of the Society's allocation for salaries from $412,00.00 to $336,486.00, a reduction of $75,514.00.

In the same fashion the Ministry suggested reductions in the amounts proposed to be allocated for various other categories of expenditures. The total of all of the proposed reductions, including that in respect of salaries was $96,698.00 so that the Society's budget would have been reduced from $821,500.00 to $724,802.00.

From the document prepared by Mr. Lovatt in November, 1977 it would appear that the Society's approved budget for 1977 was in the amount of $755,500.00. From other material it would appear that the Society's actual expenditures in 1977 were $743,492.00. Thus, in effect, the Ministry was proposing a reduction in the Society's annual budget.

Mr. Lovatt then set about to prepare a revised budget submission to the Ministry. That revised submission was approved by the Board of Directors of the Society on February 13, 1978 and was submitted to the Ministry under date of February 16, 1978.

The revised submission was in the total amount of $776,800.00, almost $52,000.00 higher than that suggested as being acceptable to the Ministry and about $44,700.00 lower than the Society's initial submission. The major differences in the two proposals by the Society were a reduction of $25,000.00 in the allowance for salaries and of $15,000.00 in the allowance for boarding rate payments. Mr. Magder's letter had suggested a reduction of the boarding rate payments by only about $8,100.00.

That was where the budget process stood when Mr. Zwerver arrived in March, 1978. He examined the material prepared by Mr. Lovatt and concluded that the submission made on February 16, 1978 did not seek financial support sufficient to meet the demands expected to be made upon the Society in 1978. Mr. Zwerver communicated his opinion to Mr. Macdonald and the Ministry withheld any further consideration of the Society's submissions to enable the preparation of a further revised budget document. The new document would reflect changes made on the basis of more accurate statistics, projections and calculations all more nearly reflecting the estimated needs of the Society.

As a result, Mr. Zwerver and Mr. McCabe, who was then Acting Local Director of the Society, prepared a third proposed budget for the year 1978 for submission to the Ministry. It was approved by the Board of Directors of the Society and sent to the Ministry on June 27, 1978.

That budget proposal was quite different from those prepared by Mr. Lovatt in November, 1977 and February, 1978. It was in the total amoung of $848,642.00. Mr. Zwerver testified that, in his opinion, that proposed budget fairly and accurately reflected the estimated needs of the Society in 1978. The Ministry were of a similar opinion and the Society's budget was quickly approved in the form submitted over Mr. McCabe's signature.

I accept Mr. Zwerver's testimony that he would not have sought approval of the budget proposal if he had not been able to justify the estimates.

There would appear to be no useful purpose served by any more detailed analysis of the differences among and between the two budgets prepared by Mr. Lovatt, the original position of the Ministry and the final budget prepared by Messrs. McCabe and Zwerver and approved by the Ministry. Those of the readers of the Report who may be interested in such details will find in Schedule 2-Z to the Report a table prepared in much the style of the attachment to Mr. Magder's letter and showing the figures corresponding to the various categories and contained in the four documents.

For brevity and ease I have written as if approval or variation of a budget submitted by a children's aid society was by the Ministry. Under The Child Welfare Act the authority to approve or vary such a budget submission is vested in the Minster of Community and Social Services and not in the Ministry.

A quick perusal of Mr. Lovatt's first proposed budget for the Society for 1978 and a comparison of it and the budget finally approved by the Ministry, would indicate that in some way he had managed, in the first proposal, to make a fairly accurate assessment of the Society's needs in terms of the total amount of money required. It must be remembered that it was prepared in November, 1977 whereas the final budget proposal was prepared in June, 1978 after almost one half of the year had passed into history. The history of that half year provided information and material for a more accurate prediction of the total year's experience.

That would indicate to me that Mr. Lovatt was perhaps rather instinctively aware of what was happening within the Society. However, he had not established a proper system for the maintenance of records from which statistics could be drawn to support or verify his awareness.

In the alternative, if the material was available from the records, as it appears to have been for Mr. Zwerver and Mr. McCabe, Mr. Lovatt had not developed a means of extracting, assembling and presenting it so as to persuade others as to the validity of his statement of the projected needs of the Society.

In my view Mr. Lovatt's duties required that the appropriate systems be established to record information and to keep it available for use as required. In addition, Mr. Lovatt was required to ensure that the Society had the means of extracting appropriate information from such records and then assembling and presenting it to illustrate or support any submission by the Society. I do not mean that he personally should have done all of that, but I do say that he should have ensured that it was done. He did not do it. Thus he did not fulfill his responsibilities as Local Director of the Society.

On the strength of Mr. Zwerver's testimony, which I accept, I am satisfied that the budget proposal prepared by Mr. McCabe and him in June, 1978 conformed to the directives or guidelines issued by the Ministry with reference to the preparation of budget submissions for 1978. It complied with all of the Ministry's arbitrary restraints in certain areas. In areas where their estimates exceeded Mr. Lovatt's, Mr. Zwerver and Mr. McCabe had assembled statistical data to support their estimates and the special needs of the Society. They adequately and properly demonstrated the Society's need for more funds.

I am satisfied that, if Mr. Lovatt had submitted a budget proposal as well prepared and documented as that submitted by Mr. McCabe and Mr. Zwerver on behalf of the Society, it would have been approved by the Ministry.

That was but another example of Mr. Lovatt's failure to perform his duties properly.

I accept Mr. Zwerver's testimony that the statistical material for the Society's operations in 1977 did not accurately reflect the full extent of those operations. The statistical material was inadequate or inaccurate. Mr. Zwerver gave some examples.

I have already mentioned that he said the statistics did not support the complaints of the staff of the Society as to oppressive workloads. As a result he established a case management information system with a statistical component as well as the case management component.

The budget proposal approved by the Ministry provided for the employment of three additional workers. It had been supported by good statistical material. That satisfies me that at least in early 1978 the Society did not have sufficient staff to perform its functions. The number of new positions created in mid-1978 leads me to infer that the shortage of staff existed in one or more years prior to 1978. Mr. Lovatt had been unable to produce material to justify his belief and so was not properly performing his duties.

That complaint by the staff led Mr. Zwerver to inquire of Mr. Lovatt as to the methods employed by the Society to "count things." Mr. Lovatt's response was that he really looked to Mr. Zwerver "to develop a better way of counting things" so as to support Mr. Lovatt's previously expressed argument for additional staff. "Things" to be counted included cases and some of the particulars thereof, such as date of opening and various types of service provided in relation thereto.

On the basis of that testimony I am satisfied that Mr. Lovatt in March or April, 1978 was aware of the need for improved methods of "counting things." Accurate "counts of things" would seem to be basic and essential ingredients of any system intended to provide accurate and reliable statistical information. I am satisfied too that Mr. Lovatt knew or should have known of this deficiency within the Society long before March, 1978. But Mr. Lovatt had not instituted any procedures to obtain an accurate "count of things." He should have. Again he failed to perform his duties.

Mr. Zwerver mentioned another example of inadequate statistical material. That related to the numbers of children in the care of the Society and the number of families served by it. It would seem that by the very nature of a children's aid society it would be basic and essential to the Society to have accurate records of the numbers of such children and families. Any inadequacy of such basic records would reflect a basic inadequacy in Mr. Lovatt's qualifications to fulfill his duties.

Mr. Zwerver commented upon Mr. Magder's letter. He agreed with the basic theme of Mr. Magder's comments that the statistical data submitted by Mr. Lovatt was deficient and did not support the Society's submission for increased funds.

He confirmed that upon the basis of the material for the year 1975, upon which the workload factor of the Society was calculated and established, the trend of the workload in the Society in 1977 was downward. But Mr. Lovatt's budget proposals were contrary to that statistical information and showed an upward trend. In the light of the statistical material relied upon by Mr. Lovatt, Mr. Zwerver was not critical of the Ministry's position as expressed by Mr. Magder. Conversely, I would view it as an expression of criticism of Mr. Lovatt.

Mr. Zwerver testified that the records maintained by the Society were "fairly deficient." He said that the volume of matters dealt with by the Society was much higher than recorded. He suggested that, if that were the situation in 1977 and 1978, it might very well have been so in earlier years as well, including 1975. Thus in all of those years the Society might have required more staff than was indicated by its own records and statistics. That would of course mean that, through no fault of its own, the Ministry had established ratios based on faulty information furnished by the Society in respect of its operations in 1975. As Local Director of the Society in all of these years Mr. Lovatt is responsible for the existence and maintenance of "fairly deficient" records.

Mr. Zwerver then moved to a more detailed examination of the budget proposals submitted by Mr. Lovatt. Each column of what is reproduced in Schedule 2-Z to the Report, except the columns representing the Ministry's initial response in January, 1978, is merely one column of one page of a nine page document representing the full budget presentation.

He said that, while Mr. Lovatt's submissions had expressed the totals of various categories set forth in the forms, they did not provide the essential information as to the component parts of the totals. So Mr. Zwerver sought to obtain the material used in preparing the estimates. He wanted the detailed information which would be required by the Ministry to enable it to make its decisions upon the proposals. The Ministry had requested him to provide the detailed information which was not contained in the material furnished by Mr. Lovatt.

I infer from that testimony that Mr. Lovatt had not properly prepared the submissions to the Ministry. That too was a failure to perform his tasks and these tasks were in the area over which he maintained close control.

Mr. Zwerver said that in preparing their submission Mr. McCabe and he had looked at the available material with reference to the budgets of some other children's aid societies. He acknowledged that it was difficult to make comparisons because of the paucity of available information. However, in general terms in comparison with other children's aid societies serving comparably sized communities with similar workload expectations, the Society's budget was low expressed in terms of monies to be expended. Mr. Lovatt's second proposal was the fifth lowest in Ontario on the basis of per capita cost.

He acknowledged that it took time to assemble the information requested by the Ministry, but the Ministry was understanding of the time spent.

In what I view as a rather damning indictment of Mr. Lovatt, Mr. Zwerver spoke of one category of the budget in which Mr. McCabe and he had felt it necessary to increase the amount suggested by Mr. Lovatt. That was the provision for office expenses. They increased the amount from $18,000.00 suggested by Mr. Lovatt in both of his submissions to $21,965.00. That was to enable the staff of the Society to have supplies, as basic as pencils and writing pads, which had not been available when Mr. Zwerver came to the Society in March, 1978.

Mr. Zwerver spoke to Mr. Lovatt about the absence of such supplies. Mr. Lovatt's response was a clear acknowledgement that he knew of the problem of inadequate supplies. He said simply that the supplies were not available because the Society could not afford them. It was ironic that that response was given less than three months after the end of the year 1977 during which the Society spent about $12,000.00 less than its approved budget. That is even more significant when examined in the light of testimony to the effect that, while the Ministry, in its review of budget proposals, examined the proposals line by line, the ultimate approval of the budget was for the total amount thereof and the Society was free to move monies from category to category as it required.

I am satisfied Mr. Lovatt was aware of the shortage of supplies and he was aware of the ability of the Society to acquire them. He chose not to exercise that ability. Such penny-pinching may have permitted Mr. Lovatt to derive some satisfaction from achieving a low per capita cost. But he did so at a cost to the Society, its staff and its clients. The cost was not measureable in terms of money. It was measureable in terms of service and morale. That was another clear instance of his failure to perform his duties adequately.

Another area of increase related to staff training and education. Mr. McCabe and Mr. Zwerver were able to persuade the Ministry of the need. In view of his admissions as to the inadequacies of the knowledge and skills of the staff of the Society, Mr. Lovatt should have been aware of the need for more training. Again he failed the Society and its staff and thus its clients.

I have already commented on the increase in the provision under the heading "Boarding Rate Payments." Mr. Zwerver said that was primarily the result of an increase in the number of children who were in the care of the Society. He said Mr. Lovatt's original submission was based upon an estimate that 125 children would be in the care of the Society each month. On the basis of their experience in the Society in 1978, Mr. McCabe and Mr. Zwerver increased that estimate from 125 to 138, an increase of slightly more than ten per cent. Mr. Zwerver said that was not a matter of any problem with maintenance of records. It was simply that more children than planned for came into the care of the Society.

It should be noted that in his letter to the Ministry on March 27, 1975, Mr. Lovatt had mentioned just that sort of result from the projected growth of population and industry and construction. It would seem Mr. Lovatt had not himself kept abreast of what was developing in the City of Sarnia and the County of Lambton. His submissions in 1975 had enabled the Society to employ two more workers. There is nothing to suggest that the Ministry would not have approved, for 1978, a request for more funds to employ more staff if the request were supported by reliable and persuasive material. Mr. Zwerver and Mr. McCabe obtained approval of a budget for 1978 which envisioned employment of three additional workers.

Mr. Zwerver acknowledged that on the basis of the trend downward of the number of children in the care of the Society, the Ministry's reduction of that budgetary provision was appropriate. That reduction reflected 118, rather than 125, as the number of children who were expected to be in the care of the Society each month.

Another area in respect which Mr. McCabe and Mr. Zwerver increased the amount proposed by Mr. Lovatt was that under the heading "Health and Allied Services." In money it is not a large item, but it may have some significance in and relationship to Kim's case. This is the heading under which medical attention is provided for children in care. I presume this would include medical examinations.

A programme of medical examinations might have saved Kim. In respect of Kim there was no testimony that anyone thought of medical examinations of her after May 27, 1976. It would seem that even after Kim's death medical services to children in the care of the Society did not loom large in Mr. Lovatt's thinking.

Another difference was that Mr. Lovatt's submissions contained no provision for a court worker. That was an area of weakness noted by the Farina Committee in its general review of the Society. I have commented upon it with specific reference to Kim's case. It would seem that Mr. Lovatt was unaware of that deficiency or chose to ignore it. In either case he is to be criticized.

Mr. Lovatt's failure or inability to prepare budgetary proposals and supporting material which properly reflected the true needs of the Society was a root cause of much of the difficulty experienced by the Society and its staff. That failure or inability led to the absence of adequate financial resources and thus to shortages of staff. That in turn led to unduly heavy caseloads for individual workers which, when coupled with other difficulties or nuisances such as lack of supplies, created an atmosphere in which poor morale of the staff was born and nurtured.

The true extent of Mr. Lovatt's failure to be effective in relation to the budgetary and financial affairs of the Society is all the more pronounced because of his persistent testimony as to his dedication of time and effort upon those affairs. It would seem he simply lacked the necessary knowledge and skill.

There was not sufficient testimony upon the Inquiry to enable me to identify any direct relationship between Mr. Lovatt's failures in his duties related to financial and budgetary affairs and the manner in which Kim's case was managed by the Society. The direct testimony was that there was no relationship between the two. But there was, throughout the testimony of Mr. Lovatt and Mrs. Harvey, what I perceived to be a thread of financial restraint coupled with a philosophy of preference to maintain children in their own homes rather than in other facilities. I am unable to make any assessment of the relative weight of those two factors in the process whereby any decision was made in Kim's case.

I am similarly unable to make any assessment of the weight which the overall deficiencies of the Society may have had upon the decisions made in Kim's case. In this comment I include such things as the low morale of staff, the dissension between or among departments of the Society, the lack of knowledge and skill possessed by the staff in many areas of their responsibilities and the lack of adequate leadership and supervision by Mr. Lovatt.

In Chapter XXVI of the Report I review the role of the Ministry in Kim's life. I express criticism of the Ministry's failure to fulfill its statutory duties to advise and supervise the Society. Mr. Lovatt in his testimony sought some refuge in that. He said that at no time during his service as Local Director of the Society did the Ministry provide to the Society support, assistance and supervision such as it provided early in 1978.

He had received assistance from the Ministry when he requested it from time to time on specific matters. In earlier years there had been annual visits by "readers," but that was discontinued in 1974. He felt that none of the comments expressed by the Ministry's staff at any time prior to 1978 indicated a state of affairs within the Society in any way aproaching the state revealed by the Farina Committee and Mr. Zwerver in their respective reports to the Board of Directors of the Society and their testimony upon the Inquiry.

He testified that he was shocked and surprised by those reports, particularly as they related to lack of procedures, tensions between the two departments of the Society and low morale among the staff. On his own testimony I am satisfied that the only shock or surprise was as to the strength or depth of the criticism expressed in the reports. He knew that there were such problems within the Society. He may not have known the full extent of those problems. But, as Local Director of the Society, he should have known. That was another of his failures.

The absence of any criticism expressed by the Ministry or its staff between 1975 and 1978 does not insulate Mr. Lovatt from criticism.

Mr. Zwerver became aware of the problem of morale virtually on his first day in Sarnia. Mr. Lovatt should have been aware of it.

Mr. Lovatt knew the very limited written material which reflected the policies and procedures of the Society. He should have known they were inadequate.

Mr. Lovatt was aware of some problems between the two departments and, he testified, he had worked with the supervisors to try to resolve them.

Those matters were no less real and troublesome because the Ministry omitted comment upon them. The absence of any adverse comment by the Ministry provides no defence or excuse for Mr. Lovatt who knew or should have known that there was a basis for adverse comment by the Ministry if it had fulfilled its duties.

On all of the testimony I am unable to determine when the problems in the Society brought to public light in 1978 began or became of serious dimension. It would seem certain that the Society never had adequate written material describing its policies and procedures. It would seem probable that the problems of staff morale and of tension between the departments existed for some time prior to 1978 and even prior to 1976. By early 1976 the dominance of the Family Services Department had been established. That must have been preceded by a period of contention. I acknowledge that those two problems may have been exacerbated by the disclosures which began in December, 1977, but they must have existed long before that and Mr. Lovatt should have been aware of them and of their full dimension and significance.

In the same way I tend to dismiss the complaint which was inherent in Mr. Lovatt's testimony as to the lack of information and material upon child abuse made available to children's aid societies generally by the Ministry.

I accept Dr. Turner's view that, regardless of the presence or absence or the sufficiency or insufficiency of material from the Ministry, each social worker has an obligation to keep abreast of developments and trends within his or her own professional interests.

Certainly any social worker employed in the field of child welfare is and was obliged to be aware of developments and trends in the detection, management and treatment of cases of suspected or actual abuse of children. There was an abundance of material available. If Mr. Lovatt did not know that it existed he should have.

If, as I believe, each social worker has such a duty to keep abreast of current practices, it is my view that the person serving as local director of a children's aid society has an even higher duty in that area.

The imposition of duties upon the Ministry and the Director appointed under The Child Welfare Act did not relieve Mr. Lovatt of his duty to provide leadership to the staff of the Society and to the Board of Directors of the Society.

In other areas of the Report I have noted observations sympathetic to Mrs. Lo in that they suggested she had been put beyond her depth when she was assigned to Kim's case. Similarly sympathetic observations might be expressed in respect of Mr. Lovatt. He was put beyond his depth when he was appointed Local Director of the Society. Unlike Mrs. Lo he had several years in the position to recognize his own limitations and to seek assistance. He did neither.

Notwithstanding any sympathy one may have for Mr. Lovatt, he must still be identified as one who bears a major share of the responsibility for the existence of circumstances within the Society which contributed so greatly to the ultimate tragedy of Kim's life.

Chapter XVI

The Role of William Higgins

William Higgins was involved in Kim's life in various capacities.

Mr. Higgins was a barrister and solicitor who conducted his professional practice in Sarnia since being admitted to the bar in 1954. His practice was general in nature, but a substantial part of it was in the area of family law. He did not at any time act for or on behalf of the Society. On occasion he did act on behalf of municipal corporations or individuals having interests adverse to those of the Society either in relation to financial matters or the care and custody of children.

In September, 1975 Mr. Higgins was retained by Jennifer Popen and Annals Popen to defend them upon the charge under section 40 of The Child Welfare Act and to oppose the application of the Society for custody of Kim. For brevity in this chapter I shall call The Child Welfare Act the "Act".

From the transcripts of the proceedings upon those two matters in provincial court it is clear to me that, from the outset, it was Mr. Higgins' opinion that the trial of the charge under section 40 of the Act should be completed before the application of the Society for custody was heard. From the testimony given upon the Inquiry by Mr. Lang, Crown Attorney, I am satisfied that he felt the two matters should be heard on the same day.

For all practical purposes Mr. Higgins prevailed. Apart from the sentencing of Annals Popen the trial of the charge under section 40 of the Act was completed before the Society's application was heard.

Neither Mr. Lang nor Mr. Higgins gave any reason for his opinion. I can only conclude that Mr. Higgins felt it would be advantageous in some way to his clients to have a determination of the charge under section 40 of the Act before entering upon the question of custody of Kim.

In his desire to have that sequence of the two hearings, Mr. Higgins was aided by the failure of the Society, the Crown Attorney and the Sarnia Police Force to be ready to proceed on January 19, 1976 when both matters were scheduled for hearing on the same day. His objection to having the matters begun on that day and then adjourned for a lengthy period to enable Dr. Singh to testify was reasonable. Mr. Higgins testified upon the Inquiry that on occasion such adjournments, in other trials in which he was involved, had been for as much as two and a half months. Any such interruption of a trial or hearing could only create difficulty for everyone involved therein.

I am satisfied that Mr. Higgins believed his primary professional duty or obligation was to Jennifer Popen and Annals Popen. I am satisfied he felt no professional or statutory obligation towards Kim.

Mr. Higgins testified that his letter to Mr. Lang dated February 10, 1976 was written as a result of instructions he had received from his clients on February 6, 1976. He testified that he had contacted Mr. Carter at the Society immediately upon receiving those instructions so that Mr. Carter from that time on could see his clients as he saw fit. Mr. Higgins testified that at that time he informed Mr. Carter of the nature of his instructions from his clients, that is that Annals Popen would accept responsibility for Kim's injuries.

I understood Mr. Higgins to say that that discussion with Mr. Carter was similar in content to his later communication with Mr. Lang in which he set forth his proposal of a plea of guilty by Annals Popen and a withdrawal of the charge against Jennifer Popen. I gathered that he felt, and I think properly so, that the Society would be interested and involved somehow in the proceedings under section 40 of the Act.

I accept Mr. Higgins testimony that he informed Mr. Carter of his proposal for the resolution of the charges under section 40 of the Act.

Counsel for Jennifer Popen upon the Inquiry withheld any waiver of privilege attaching to communications between her and Annals Popen as clients and Mr. Higgins as solicitor. Therefore, it was not possible for me to explore the nature or basis or source of the instructions given to Mr. Higgins beyond what had already been indicated by him in his letter to Mr. Lang and in his submissions on behalf of his clients in the Provincial Court (Family Division) of the County of Lambton, hereinafter in this Chapter called the "Court."

Some indication of the rationale for the instructions may be found in the first paragraph of a written statement made and signed by Jennifer Popen on June 10, 1978 in the presence of an Investigator for the Inquiry. That paragraph reads as follows:

> "My husband was drinking at the time when the charge was laid under the Child Welfare Act. It would have made it easier to have Kimmy returned home to us from the Children's Aid if Annals plead guilty to that charge. This is what Mr. Higgins said, but at the same time Mr. Higgins didn't know that I was the one. He didn't know that the child was being abused by me. I never knowed he was on the Children's Aid, he never said anything like that."

That of course leaves open the question of the basis for any statement which Jennifer Popen in that document attributes to Mr. Higgins.

Mr. Higgins testified that until speaking to Mr. Carter on or immediately after February 6, 1976, he had told Mr. Carter that he was not to contact his, Mr. Higgins', clients until completion of their trial upon the charge under section 40 of the Act. He testified that he was aware of Mr. Carter's desires and responsibilities, but he felt that the existence of the charge under section 40 of the Act, which he regarded as being in a sense a criminal proceeding, was good reason to seek to prevent Mr. Carter from having contact with his clients. From the point of view of counsel for the parents such a view is not unreasonable. That is not to say that Mr. Carter and the Society should have accepted the prohibition or restriction which Mr. Higgins imposed. Mr. Higgins testified that Mr. Carter seemed to have difficulty in recognizing that the two proceedings were different from one another.

I am somewhat troubled by Mr. Higgins' testimony that he prepared for the trial of the charge under section 40 of the Act only upon the basis of its being the result of something which occurred on August 31, 1975. He said his recollection was that until the trial on February 23, 1976 he was not aware of some or all of the earlier incidents and injuries mentioned in the synopsis of evidence read by Mr. Hibberd, the Assistant Crown Attorney. Mr. Higgins said he had prepared for the trial upon the basis that the defence to be presented on behalf of his clients would seek to satisfy the Court that the injuries Kim suffered on August 31, 1975 were caused by accident. He said that Mr. Hibberd's synopsis did not cause him to have any reservations as to who was responsible for Kim's injuries.

I am surprised that a counsel of Mr. Higgins' stature, experience and skill would not have inquired of Mr. Lang as to the nature of the evidence which might be tendered by the Crown Attorney, particularly when the information as laid by Police Constable Wyville related to the whole period of Kim's life and not only to August 31, 1975 or a short period prior thereto. There was nothing in the testimony upon the Inquiry to indicate that Mr. Lang would not have made full disclosure of the case to Mr. Higgins.

That testimony of Mr. Higgins is all the more surprising since he was retained also to oppose the Society's application for wardship. I would have expected that in connection with that matter he would have been considering more than one incident in isolation from the rest of Kim's life and care. I would also have expected that he would have inquired of Mr. Carter or others at the Society as to the evidence which the Society expected to present in support of its application. Again there was no testimony upon the Inquiry to indicate that anyone at the Society would have declined to make full disclosure of its case if requested.

I am confident that had such a request been made by Mr. Higgins to Mr. Lang or to the Society it would have been granted.

Despite my comments upon Mr. Higgins' preparation for the trial and hearing in the Court, I share his view, as expressed in his testimony upon the Inquiry, that he achieved a good result for his clients, Annals Popen and Jennifer Popen. I would only add that the result was especially good for Jennifer Popen. His primary professional duty as a barrister and solicitor was to achieve a good result for his clients.

Others bear the responsibility for the fact that the results flowing from Mr. Higgins successful performance of that professional duty were not favourable to Kim.

Mr. Higgins testified that his submission to the Court on February 23, 1976 was really addressed to the matter of sentencing and to support his request that a pre-sentence report be obtained.

In further explanation of his submissions to the Court, particularly the portions to the effect that Annals Popen felt responsible for Kim's injuries, Mr. Higgins testified that he entered the plea of guilty on behalf of Annals Popen as a result of instructions given to him. He testified that Annals Popen had not admitted that he had caused all of the injuries.

Mr. Higgins' submission was carefully worded. It was based on written notes in his file. While it takes up about fifty lines in the transcript, really all that it amounts to is an expression of Annals Popen's feeling "probably responsible in whole or in part" for Kim's injuries. It then goes on to make, as a basis for that feeling, reference to a faulty crib, and to Annals Popen's "drinking problem." Then there was reference to the good housekeeping in the home and the parents' love for and pride in Kim and Jennifer Popen's not wanting to leave Annals Popen "as a result of whatever happened." Then it goes on to suggest that perhaps

Annals Popen, when drunk, dropped Kim "rather than an abusive action."

The submission was in no way helpful to the Court in determining how or by whom Kim was injured. If anything it directed any focus of attention away from Jennifer Popen and towards Annals Popen.

In his submission Mr. Higgins did suggest to the Court that the entire matter merited investigation. Mrs. Harvey of the Society was present. She should have been alert to what Mr. Higgins was saying. Whatever he said he did not say that Annals Popen admitted causing any injury to Kim. Mr. Higgins' submission should not in any way have caused Mrs. Harvey to change her expressed opinion that Jennifer Popen was involved in Kim's injuries and was the one upon whom the greater effort by the Society's personnel should be concentrated.

Mr. Higgins' recollection was that Mr. Hibberd had requested that both Annals Popen and Jennifer Popen be assessed by a psychiatrist. In the circumstances it would seem that that was a reasonable request. The transcript of the proceedings in the Court available to the Inquiry is not complete and does not contain any reference to such a request. Perhaps by happenstance, or perhaps as a result of such a request having been made by Mr. Hibberd, the report of Dr. Curtin addressed to the Senior Probation Parole Officer and dated March 19, 1976 following his interviews with Annals Popen contained reference to an earlier interview with Jennifer Popen. Dr. Curtin enclosed with his report a copy of his consultation note resulting from that interview.

The pre-sentence report prepared to assist the Court in March, 1976 states that a copy of Dr. Curtin's report was attached thereto. I presume the consultation note with reference to Jennifer Popen was attached as well or, if not, was available to the Court and to the Crown Attorney and would have been made available to the Society if requested.

Thus in my view Mr. Higgins, in seeking to further the interests of his client Annals Popen by seeking all possible information to support submissions to be made in efforts to mitigate sentence, served the best interests of the Court, the Crown

Attorney and the Society and, indirectly, Kim by requesting a pre-sentence report. In that way the views of Dr. Curtin with reference to Annals Popen and Jennifer Popen were obtained. It was no fault of Mr. Higgins that full use was not made of the information disclosed by the pre-sentence report or that the matter was not pursued so as to get beyond the limitations and restrictions upon the validity of his opinion which Dr. Curtin recognized and set forth in his report. In my view there was no legal obligation upon Mr. Higgins to do more than he or his law clerk did on and prior to February 23 and February 25, 1976.

At about that time an unfortunate complication was added to Mr. Higgins' involvement in Kim's life. In anticipation of the annual meeting of the Society, Mrs. Harvey approached Mr. Higgins to inquire if he would be prepared to stand for election to the Board of Directors of the Society.

Mrs. Harvey had no mandate from the Board of Directors of the Society or any committee thereof to approach Mr. Higgins in this regard, but she did have Mr. Lovatt's approval. She said she did so because she was impressed by Mr. Higgins' skill in representing Kim's parents and by his aggressiveness. She described him as being "a scrapper" and "a good legal person" who would strengthen the Board of Directors after being trained and educated as a member of that Board. She said that when, after taking some time for consideration of her request, Mr. Higgins told her he was prepared to serve as a member she reported that to Mr. Lovatt. She said she had no further participation in Mr. Higgins' nomination and election to that Board.

Mr. Higgins' testimony in this area was substantially similar to that of Mrs. Harvey. He felt she had approached him about this after completion of the hearing of the Society's application for Kim's wardship on February 25, 1976.

Mr. Higgins elaborated upon this discussion with Mrs. Harvey. He said she informed him generally of the structure of the Society and its Board of Directors and the duties of the members of that Board. He said he reflected on it for a time and accepted.

The records of the Society filed upon the Inquiry show that Mr. Higgins became a member of the Board of Directors on March 2, 1976. That was the date of the annual meeting of the Society as shown by records of the Society. There is nothing to indicate that Mr. Higgins attended that meeting. He felt he had not attended any meeting of the Society until some time in April, 1976.

I am satisfied that none of those involved in this area, Mrs. Harvey and Mr. Lovatt, had any ulterior motive in proposing Mr. Higgins as a member of the Board of Directors. Clearly the nominating committee could have had no ulterior motive for there was no evidence to indicate that any member of the committee or of the Board of Directors was aware of Mr. Higgins' retainer on behalf of Kim's parents.

I am equally satisfied that Mr. Higgins had no ulterior motive in allowing his name to be put in nomination and, when elected, serving as a member of the Board.

After his election to the Board of Directors of the Society, Mr. Higgins attended various meetings of the Board and of some of its committees. I formed the impression that he was not very deeply involved in many areas of the Board's concerns, but did make a worthwhile contribution to some particular areas in which he was especially interested or in which his own skills and training were useful.

The original application of the Society for custody of Kim had been heard and the Order had been granted. By the time Mr. Higgins was elected to and began to serve on the Board of Directors of the Society, there was no indication that the Society or Jennifer Popen and Annals Popen contemplated any appeal from that Order. For all practical purposes that matter was complete.

By the same time the trial of Jennifer Popen upon the charge under section 40 of the Act had been completed and that of Annals Popen had been virtually completed. The charge against Jennifer Popen had been withdrawn. Annals Popen had entered a plea of guilty and had been found guilty. All that remained was the imposition of sentence which was done on March 29, 1976. No appeal was contemplated or taken.

I am satisfied that Mr. Higgins' retainer by Annals Popen and Jennifer Popen upon the Society's application was completed, fulfilled and concluded on February 25, 1976. His retainer by Jennifer Popen upon the charge under section 40 of the Act was completed, fulfilled and concluded on February 23, 1976. His retainer by Annals Popen upon that charge was completed, fulfilled and concluded on March 29, 1976.

Apart from involvement in that matter of sentence Mr. Higgins had no involvement or connection with or retainer by Jennifer Popen and Annals Popen or either of them from February 25, 1976 until after Kim's death on August 11, 1976. He was retained by Jennifer Popen in connection with the charge of manslaughter which was ultimately laid against her and Annals Popen. Annals Popen retained other counsel in connection with that charge.

Mr. Higgins appeared on behalf of Jennifer Popen in connection with that charge. Her trial was completed when having changed her plea to guilty, she was found guilty on December 5, 1977 and was sentenced on December 21, 1977.

Mr. Higgins knew that until her death Kim remained a ward of the Society.

At no time did Mr. Higgins formally or informally advise the Board of Directors of the Society or any member thereof or any officer of the Society that he acted for Annals Popen and Jennifer Popen or either of them in any of these matters. There was no evidence that any member of the Board of Directors was aware that Mr. Higgins was engaged in any matter in which the Society was involved, even peripherally. There were no evidence that any member of the Board of Directors was aware of the Society's involvement with Kim's family.

Mr. Lovatt, Local Director of the Society, knew that Mr. Higgins acted for Jennifer Popen and Annals Popen in the Court until March 29, 1976. Mrs. Harvey, Mrs. Lo and Mr. Carter also knew that. I would presume they knew he acted for Jennifer Popen after Kim's death. I would presume they knew of Mr. Higgins' election to the Board of Directors of the Society.

At no meeting of the Board of Directors of the Society which he attended did Mr. Higgins declare a conflict of interest as a result of his retainer by Jennifer Popen and Annals Popen or either of them. There was nothing to indicate that any matter dealt with at any such meeting related to Kim or could affect the management of her case by the Society or the involvement of the Society with Jennifer Popen and Annals Popen.

I am satisfied that, apart from his conduct of the defence of Jennifer Popen and Annals Popen upon the matters in the Court, Mr. Higgins played no part in the management of Kim's case by the Society during her lifetime.

Mr. Higgins' conduct of that defence did create some difficulty for the Society's personnel, particularly Mr. Carter. As a result, Mr. Carter did not have as much contact with Kim's family as he might have liked to have had. I do not find any fault with Mr. Higgins in that regard. He perceived his acts for and advice to his clients, Kim's parents, as being beneficial to their interests in the various proceedings. It was not his fault that the Society and Mrs. Harvey and Mr. Carter permitted Mr. Higgins to maintain that limitation upon Mr. Carter's contact with his clients.

In early February, 1976, Mr. Higgins removed that limitation. So far as Mr. Higgins was concerned, Mr. Carter was then free to contact Kim's parents.

I am satisfied that Mr. Higgins did not in any way influence or participate in the decision by the Society's personnel to return Kim to her home. That decision was effectively made by Mrs. Harvey for the Society by late February, 1976 and was finalized by Mrs. Harvey and others in early May, 1976.

Despite the testimony of Mrs. Myers as to concerns within the ranks of the Society's staff that pressure had been exerted to bring about Kim's return, I am satisfied that Mr. Higgins did not exert any such pressure on anyone. Mr. Higgins denied that he had. I believe him. Mr. Lovatt and Mrs. Harvey denied that he had exerted any pressure other than a proper defence of his clients. I accept that testimony.

Mr. Higgins impressed me as a vigorous and forceful person with a confident and assured manner. It may be that some of the Society's personnel allowed themselves to be influenced by that, but there was no evidence upon the Inquiry to support that conclusion.

I assume that until the conclusion of proceedings in the Court there were informal discussions between Mr. Higgins and Mrs. Harvey and other personnel of the Society in the halls and corridors of the courthouse. Probably some of those discussions related to Kim and the management of her case by the Society.

I accept Mr. Higgins' testimony upon the Inquiry that Mrs. Harvey did not at any time tell him that Kim would be returned to her home. I accept his testimony that, from the way the proceedings in the Court developed, he presumed that Kim would be returned to her home if Annals Popen and Jennifer Popen complied with the directions of Judge Nighswander and the Society. That was a reasonable and valid presumption.

I accept Mr. Higgins' testimony that after he became a member of the Board of Directors of the Society he did not discuss the issue of Kim's return with Mrs. Harvey or Mr. Lovatt.

Upon the Inquiry there was considerable testimony upon the issue of Mr. Higgins' obligations as a member of the Board of Directors of the Society. There was a suggestion that his retainer by and his acting for Jennifer Popen and Annals Popen or either of them, in the Court and later upon the manslaughter charge, created a conflict of interest or, at least, the appearance of a conflict of interest.

Any such conflict of interest or appearance thereof could not arise before Mr. Higgins' election to the Board of Directors of the Society on March 2, 1976 or later in March, 1976. By then all that remained of the proceedings in the Court was the matter of Annals Popen's sentencing which was completed on March 29, 1976. While interested in it, the Society was not a party to that proceeding. I accept Mr. Higgins' testimony that he did not attend any meeting of the Board of Directors of the Society until April, 1976.

I do not perceive that any conflict of interest existed for Mr. Higgins between March 2, 1976 and March 29, 1976 when the proceedings in the Court were completed and his retainer by Jennifer Popen and Annals Popen was completed. During that period of time Mr. Higgins attended no meeting of the Board of Directors and took no part in the affairs of the Society.

At worst Mr. Higgins used questionable judgement in not advising his fellow directors of his involvement in Kim's case. It would have been wise for him to have done so promptly after his election to the Board of Directors. If he did use questionable judgement, he was not alone. Neither Mr. Lovatt nor Mrs. Harvey advised the Board. Their error in judgement was greater than Mr. Higgins. Even if Mr. Higgins did use questionable judgement in that area nothing detrimental to Kim flowed from it and the management of her case by the Society was not affected by it.

I take a different view of Mr. Higgins' position from the time he was retained by Jennifer Popen in August, 1976 in connection with the investigation by the Sarnia Police Force into Kim's death and the resulting charge of manslaughter.

I accept Mr. Higgins' testimony that he learned of Kim's death when it was reported in the newspaper. I accept his testimony that he was retained by Jennifer Popen on August 23 or 24, 1976.

From his acceptance of that retainer until the conclusion of Jennifer Popen's trial upon the charge of manslaughter on December 21, 1977, and so long thereafter as he continued to render any service and advice to her in connection with the matter Mr. Higgins was, in my view, in a position where his personal interests and obligations as a member of the Board of Directors of the Society were, or appeared to be, in conflict with his professional interests and obligations as Jennifer Popen's solicitor.

The Society was not directly concerned with the possible result of Jennifer Popen's trial, that is her guilt or innocence. At the time of her death Kim, was by order of the Court, in the care and custody of the Society although she had been returned to her parents' home. The Society was thus directly concerned with the investigation into the circumstances surrounding her death. The management of Kim's case by the Society almost certainly would be drawn into that investigation and any resulting trial. In the result, it was.

I am not to be taken as meaning that Mr. Higgins could not have resolved the difficulty by appropriate action and disclosure of his position to the Board of Directors of the Society.

It is apparent that the Board of Directors of the Society, as a Board, and those members thereof who testified upon the Inquiry, were not aware in August, 1976 that, when Kim died, she was in the care and custody of the Society. As individuals and as the Board, they learned of that during the trial of Jennifer Popen and Annals Popen for manslaughter.

In my view, Mr. Higgins, as a member of the Board of Directors of the Society, owed a duty to the Society and its Board of Directors to inform them that, when Kim died, she was in their care and custody. He should have done so when he saw the item in the newspaper reporting her death. He should have known that the Society was likely to be criticized at some time for its management of Kim's case in general and particularly for having returned her to her parents' home. That criticism did come. It was expressed publicly. It was well-founded.

Mr. Higgins did not advise the Board of Directors of the Society or any member thereof or any officer of the Society of the fact that Kim was a ward of the Children's Aid Society when she died. He knew it. He would not have breached any confidence of his client, Jennifer Popen, to have informed the Society of the fact. The information was public in the sense that it formed part of the record of a proceeding in the Court in which the Society had been a party. In my view, he would not have adversely affected Jennifer Popen or her defence of the charge of manslaughter by informing the Board of Directors of the Society of that fact.

Again, Mr. Higgins was not alone in his failure to inform the Board of Directors of the Society of Kim's status when she died. The Society's personnel who were involved in Kim's case were aware of the fact. They remained silent. Although Mrs. Harvey advised Mr. Allen of Kim's death while a ward of the Society he was left with the impression that it was an accidental death.

By remaining silent and not informing the Board of Directors of the Society of Kim's status at the time of her death, Mr. Higgins did a disservice to the Society and its Board of Directors. It had no effect upon Kim. She had died. It did not advance the interests of Jennifer Popen.

The disservice to the Society and its Board of Directors may have been only temporary, but it certainly led to criticism and embarrassment. Perhaps it has also led to a good result. The Society has been purged and, hopefully, improved.

Mr. Harry Zwerver in his testimony said that when he was appointed to administer the Society in early 1978 he was unable to assure the Board of Directors that there was not then still the possibility that there was another child in the care of the Society similarly exposed to the same dangers as those to which Kim had been exposed. Hopefully that possibility has been decreased as a result of the criticism and embarrassment of the Society expressed in 1977 and subsequently.

The criticism and embarrassment of the Society in part led to the Inquiry. Hopefully the Inquiry and this Report and whatever may flow from them will be beneficial to children elsewhere in Ontario as well as in Sarnia and the County of Lambton.

Mr. Higgins in testifying upon the Inquiry seemed unable to perceive that a situation of conflict of interest might exist. He seemed to feel that the interest of the Society in the matter ended with Kim's death. With respect and for the reasons I have indicated, I disagree to the extent I have set forth.

Even if there were not a situation of conflict of interest, from about August 23, 1976 Mr. Higgins used questionable judgement in failing to inform the Board of Directors of the Society. It had no effect on Kim's life. It may have had an effect on some other child's life.

Another question as to Mr. Higgins' role related to the possible application of section 41 of the Act. It was suggested that when Mr. Higgins was retained by Annals Popen and Jennifer Popen in September, 1975 he received information that Kim had been physically ill-treated and was in need of protection. It was suggested that the provisions of section 41 of the Act imposed upon Mr. Higgins a duty and obligation to report that information to a children's aid society or Crown attorney.

Upon a strict reading of section 41 of the Act, and particularly sub-section 2 thereof, that suggestion would appear to be well-founded only if the information given to him by his clients was sufficient to give him reasonable and probable cause to believe that Kim had been physically ill-treated or was in need of protection.

Nothing which Mr. Higgins stated in the Court reveals much as to the nature of the information which he did receive. Jennifer Popen's refusal upon this Inquiry to waive the privilege attaching to her and Annals Popen's discussions with Mr. Higgins in relation to the proceedings in the Court prevented counsel from obtaining any such particulars from Mr. Higgins during the Inquiry.

Thus I am unable to determine whether or not the information given to Mr. Higgins was sufficient to require him to make a report pursuant to section 41 of the Act.

I realize that my interpretation of the statute, if it is correct, would remove the privilege that attaches to communications between a solicitor and his client with reference to or in anticipation of litigation or prosecution.

I sympathize with Mr. Higgins. He testified that, while he was not aware of the provisions of section 41 of the Act at the time, he felt the statute did not impose any duty upon him, a solicitor, to report information given to him by his clients in preparation of their defence of the proceedings in the Court. His opinion was that, if the issue were raised in a trial or upon an application to a court of competent jurisdiction to interpret the statute, the decision would be that the statute did not impose any duty upon a solicitor to report such information. His view was that preservation of solicitor-client privilege was essential to our system of jurisprudence. I share that latter view, but I disagree with Mr. Higgins' opinion as to the interpretation of section 41 of the Act as it was in 1975 and 1976.

As he contemplated the matter while testifying upon the Inquiry he suggested that he had in fact fulfilled the obligation by his statement on behalf of Anna Popen in the Court. He said he had no information other than what he revealed. I reject the suggestion that a statement in court six months after receiving information is compliance with the statutory requirement.

Mr. Higgins expressed the opinion that even if section 41 of the Act applied to information of the sort he had received he would not have reported the information to a children's aid society or Crown attorney. He felt he would have been entitled to ignore the section. I think he is in error.

I share Mr. Higgins' view that section 41 of the Act as it then was could cause a real problem for any lawyer involved in proceeding in any court relating to issues of wardship and child abuse.

In full sympathy and with understanding of his problem and position, I nevertheless feel he was in breach of section 41 of the Act in the fall of 1975 when he failed to report information to a children's aid society or Crown attorney.

In my view assuming that, in August, 1976 or some time thereafter, he received further information as to physical ill-treatment of Kim, he was in breach of section 41 of the Act by failing to report it to a children's aid society or Crown attorney.

Raymond Wyrzykowski, a barrister and solicitor who had been a member of the Board of Directors of the Society and who had served as President for two years, voluntarily appeared as a witness upon the Inquiry. He is a highly respected member of his community and his profession.

Mr. Wyrzykowski, was asked as to his opinion of section 41 of the Act as it was in 1975 and 1976 and its relationship to or effect upon solicitor-client privilege. He responded that, although his personal interests were very child-oriented, he would feel bound by the solicitor-client privilege. He said he "hated" to give that answer, but felt obliged to do so. I gathered he felt preservation of such privilege was important and that if it were removed or weakened in any area its general application might be affected.

I mention Mr. Wyrzykowski's testimony in this area only to show the problem that section 41 of the Act, as it was, created for barristers and solicitors and that Mr. Higgins was not alone in his view as to the application of that section.

There was no testimony or submission to indicate that there was any judicial resolution of the matter or that the Law Society of Upper Canada had expressed any opinion or made any ruling upon the matter.

I note that the legislation enacted in 1978 appears to resolve the problem. Section 49 of The Child Welfare Act, 1978, which corresponds to and elaborates upon section 41 of the Act in force in 1975 and 1976, provides, in sub-section 4 thereof, that nothing in the section shall abrogate any privilege that may exist between a solicitor and the solicitor's client.

Another matter raised with Mr. Higgins related to a ruling of the Professional Conduct Committee of The Law Society of Upper Canada in September, 1977. That ruling was made in response to an inquiry by a solicitor associated with the Child Welfare Review Committee which deals with appeals respecting the estimates of various children's aid societies. The Professional Conduct Committee expressed the view that it would be wrong for a lawyer who was a member of the board of such a society to appear on any matter if there was any possibility of a conflict of interest or even an appearance of such a conflict between what the lawyer sought to achieve for the client and the interests of the society.

I am satisfied that Mr. Higgins was apprised by Mr. Lovatt of the general tenor of the letter written by the Deputy Secretary of The Law Society of Upper Canada. When he was so apprised, Mr. Higgins expressed the opinion that, in the circumstances as they then were, Kim being then dead and no longer a ward of the Society and the Society not being a party to the prosecution, the view expressed by the Professional Conduct Committee was not relevant to his position. In his testimony upon the Inquiry he said there was then no adversary situation involving Jennifer Popen and the Society. He said the adversary situation involved Jennifer Popen and the Crown or prosecution.

Mr. Higgins expressed that opinion as his continuing and considered opinion at the time he testified upon the Inquiry.

In a technical sense he may very well be correct. He was seeking an acquittal of Jennifer Popen. Her acquittal or conviction, *simpliciter*, was of no concern to the Society. Nonetheless there could have been the appearance of a conflict of interest. The role of the Society and its personnel in Kim's life was almost certainly going to be mentioned in some way during Jennifer Popen's trial. In the end comments made during or in close relationship to that trial as to the decisions and actions of the Society and its personnel were probably among the factors which led to my appointment to conduct this Inquiry.

It is not for me to determine whether Mr. Higgins' retainer by Jennifer Popen in August, 1976 and his conduct of her defence upon the charge of manslaughter offended against the letter or spirit of the view of the Committee of The Law Society of Upper Canada.

In my view, even if he did not offend against the letter or spirit of that ruling, and I think he did, Mr. Higgins displayed questionable judgement in continuing to act on behalf of Jennifer Popen while he remained a member of the Board of Directors of the Society.

Mr. Higgins testified that in January, 1978, he wrote a letter to the Society. He said that letter could have been interpreted as being a letter of resignation from the Board of Directors of the Society. He said it was treated as such and his resignation as a member of the Board of Directors was accepted. By that time, of course, Jennifer Popen's trial was completed and the comments critical of the Society and its personnel which I mentioned earlier had been made and published.

Chapter XVII

The Role of the Board of Directors of the Society

For brevity I shall hereafter in this chapter call the Ministry of Community and Social Services the "Ministry."

There was no evidence upon the Inquiry that the Board of Directors of the Society, which for the purposes of this Chapter shall be described simply as "the Board," knowingly or consciously played any part in the life or death of Kim.

There was no evidence to indicate that at any time during her lifetime the Board or any member thereof, other than Mr. Higgins, was in any way aware of her case. The Board was not aware that the Society was in any way involved in her life. The Board was not aware that she was in the care and custody of the Society, *de facto* or *de jure*, from August 31, 1975 until her death.

A day or two after Kim's death Mrs. Harvey did orally inform Mr. David A. Allen, the then President of the Society, of her death and that she was a ward of the Society at that time. Significantly, in communicating that information to Mr. Allen, Mrs. Harvey did not advise him that the circumstances surrounding Kim's death were such as to have caused the Sarnia Police Force to begin an investigation into her death.

Mr. Allen testified that Kim's death was mentioned in the newspapers. It was reported as having been an accidental death.

He was left with the impression that a ward of the Society had died as the result of an accident. He understood that Mrs. Harvey was merely apprising him of the situation in case any one should direct any inquiry to him about Kim's death.

There was nothing told to him to indicate that Kim may have died as a result of criminal acts.

There was nothing told to him to indicate the nature and extent of the involvement of the Society in her life, including her removal from and subsequent return to her parents' home and the proceedings in the Provincial Court (Family Division) of the County of Lambton leading to Annals Popen's conviction on the charge under section 40 of The Child Welfare Act and the order placing Kim in the custody of the Society.

For brevity in this chapter I shall call The Child Welfare Act the "Act."

There was nothing told to him to indicate that the circumstances of Kim's death and of her family were such as to lead the Society to consider removing the infant, Karie, from the home or to remove him. In any event that conversation between Mrs. Harvey and Mr. Allen occurred after the infant was removed from the home on August 13, 1976.

There was nothing told to him to indicate that any action or decision by any of the Society's personnel involved in Kim's case might have been such as to lead to public criticism of the role of the Society in her life.

Mr. Allen did not ask Mrs. Harvey for any details of the circumstances surrounding Kim's death. On the basis of my assessment of Mr. Allen as a competent, caring and concerned member of the Board and community, I am confident that had Mrs. Harvey's communication to him been frank and complete he would have asked for such details and would have initiated appropriate procedure within and by the Board.

Thus I am confident that Mrs. Harvey's conversation was bland and innocuous in the sense that it allayed rather than aroused any concern that might have arisen had Mr. Allen then learned what he and the public began to learn in December, 1977. I think Mr. Allen acted reasonably when he assumed that he was being fully informed of all pertinent details and that the Society bore no responsibility for the unfortunate event.

Even more significantly neither Mrs. Harvey nor anyone else, especially Mr. Lovatt and Mr. Higgins, informed Mr. Allen or the Board or any other member thereof that a charge of manslaughter had been laid against both of Kim's parents.

Mr. Allen could not recall that Mr. Lovatt, at any time prior to December, 1977, even spoke to him about Kim, the management of her case by the Society or her death.

It was not until the trial of Annals Popen and Jennifer Popen for manslaughter in December, 1977 that the Board began to learn the real extent of the involvement of the Society in the life and death of Kim. The Board's initial information came from the news media and the reports therein of the trial proceedings and events associated therewith. Even as those reports began, Mr. Allen did not associate the trial of Annals Popen and Jennifer Popen with Mrs. Harvey's brief telephone conversation with him sixteen months earlier in August, 1976.

Apart from Mrs. Harvey's telephone message to Mr. Allen there was, until December, 1977, no communication from any employee of the Society to the Board or any member thereof with reference to Kim and the Society's involvement in her life. Kim's case was not mentioned in any way even in Mr. Lovatt's regular written or oral reports to the Board. Kim's case was not discussed at any meeting of the Board or any committee thereof.

Mr. Allen did not advise other members of the Board of Mrs. Harvey's telephone call to him.

On her own testimony, Mrs. Harvey suspected on August 11, 1976 that Kim had died as a result of abuse inflicted upon her. Her suspicions were confirmed on August 12, 1976 during conversations with police officers.

Mrs. Lo had seen Kim's body on August 11, 1976 and had seen the full extent of the external marks of her injuries. Mrs. Lo was with Mrs. Harvey during some or all of her conversation with police officers on August 12, 1976. In her recording in the file of the Society for the period from September 1976 to January 1977, Mrs. Lo wrote:

> "In mid-September both Mr. and Mrs. Popen had been arrested and charged with

> manslaughter. Mr. Popen was granted bail on September 20, 1976 on condition he raise a $3,000 surety. Mrs. Popen was remanded to St. Thomas Psychiatric Hospital for assessment for a period not to exceed 60 days. Court hearing was adjourned from September 27, 1976 to November 29, 1976 to January 13, 1977 to February 17, 1977."

On August 12, 1976, Mrs. Harvey spoke with Mr. Lovatt with reference to Kim's death. Although he was on vacation on August 12, 1976, he met with police officers and knew that a police investigation was underway. On his return from vacation he knew that Annals Popen and Jennifer Popen had been charged with manslaughter. He felt that the matter being *sub judice* it could not be discussed.

On the testimony of various members of the staff as to meetings of the teams of workers and the nature of the discussions thereat I infer that Kim's death and the fact that her parents were charged with manslaughter were discussed at one or more of those meetings. I infer too that the matter of the arrest and subsequent appearance of Annals Popen and Jennifer Popen in court were duly reported in and by local media in Sarnia. Thus other members of the staff of the Society, both social workers and clerical employees, would have been aware of the circumstances.

It is amazing that, with so many of the staff of the Society at every level, including clerical workers, aware or possibly aware of the full significance to the Society of Kim's death and the charge against her parents, the Board remained unaware of all of the circumstances of the case.

The responsibility lies on Mr. Lovatt as Local Director. He chose to remain silent because of his perception of the implications of the expression *sub judice*.

The responsibility lies on Mrs. Harvey. She spoke with Mr. Allen. She did not give him a complete and accurate report. She did not expand upon it later when Annals Popen and Jennifer Popen were charged with manslaughter.

The responsibility lies on Mrs. Lo. She knew of the relationship between Kim's death while in the care of the Society and the charge against her parents. A similar responsibility lies on every other employee of the Society who was privy to that information.

The responsibility of Mrs. Lo and staff personnel, other than Mr. Lovatt and Mrs. Harvey, is lessened by recognition of usual methods of communication between staff and the Board. I am left in wonderment that no staff member mentioned the case, however casually, to some member of the Board. Mrs. Mildred Patricia Wood, a member of the Board, did have among her friends at least one staff member with whom she discussed generally matters of mutual interest. I am sure that Mrs. Wood was not unique in that. Other members of the Board must have had friends or acquaintances on the staff of the Society.

In fairness to Mrs. Lo and other junior staff, they were entitled to assume that the supervisory or management personnel would have fulfilled their duties to the Board. Those duties include keeping the Board informed of matters which may affect the operation of the Society or its position in the community. Kim's death in all the circumstances was such a matter.

It is a sorry comment upon the Society that, despite the failure of supervisory staff to inform the Board, the ability of junior staff to communicate with the Board was such that none of them felt free or obliged to inform the Board. If any did feel free or obliged, there is no testimony that any acted upon such feeling.

It will be helpful to review briefly the organization of the Society.

The Society is a corporation without share capital incorporated under the laws of the Province of Ontario on November 21, 1933. Membership in the corporation and the composition of its Board of Directors are governed by its by-laws.

At all times relevant to the Inquiry, the Act imposed upon the Society an obligation to appoint a local director responsible to the Board for the administration and enforcement of that statute and regulations thereunder. The Act imposed on the local director so appointed responsibility to co-operate to that end with the Director appointed for the purposes of the Act. I believe the Director was sometimes called the "Director of Child Welfare"; so hereafter in this Chapter I shall use the term Director of Child Welfare when speaking of the Director. The local director was also required to perform such other duties as maybe set forth in the by-laws and directions of the Society.

The Act imposed on the Director of Child Welfare the obligation of advising and supervising children's aid societies and of inspecting or directing and supervising the inspection of the operation and records of such societies.

During all of Kim's life, William John Lovatt was the Local Director of the Society. He resigned from that position early in May, 1978.

The Act set forth the purposes for which every children's aid society was to be operated. Those purposes appear to have been an enlargement and elaboration of the purposes set forth in the document incorporating the Society. In brief summary those purposes are to provide assistance, supervision, care and protection to children.

The Act required every children's aid society to provide at least the standard of service prescribed by regulations made under the Act. Regulation 86 made under that Act contained, after the heading "Standards of Service," sections 11 to 22 which set forth the qualifications one must possess to be eligible to be employed in various capacities in a children's aid society and which set forth various requirements as to the keeping of records and the management of cases. Only sections 11 to 18 of that Regulation 86 were relevant to the concerns of this Inquiry.

The testimony presented upon the Inquiry was to the effect that the by-laws of the Society authorized a Board of Directors composed of twenty-one persons including two nominees of the Municipal Council of the County of Lambton and two nominees of the Municipal Council of the City of Sarnia. The nominees of each municipal council were members of that municipal council. That complied with the requirements of the Act.

Documents prepared by the Society and filed as an exhibit upon the Inquiry reveal that in some years the Board was composed of fewer than twenty-one persons even assuming, I believe correctly, that the President, Secretary and Treasurer of the Society were appointed from among the members of the Board and retained membership thereon while they served in those offices. In the years covered by those six documents, anywhere from nine to fifteen members of the Board in any year were re-elected to serve another term. In most instances the President, after a term of one or two years in that office, did not continue to serve as a member of the Board.

The oral testimony upon the Inquiry was to the effect that each year interested citizens were approached and were asked to permit their names to be put in nomination to serve as members of the Board for at least two years and a maximum of six years, which later was increased to ten years in the case of members of the Executive Committee.

There was no evidence as to the criteria applied by those responsible for the initial approach to such interested citizens and for the ultimate decision to place a person's name in nomination. The evidence upon the Inquiry satisfied me that if there were any such criteria they did not include any requirement of familiarity with the provisions of the Act and the regulations thereunder nor did they include any requirement of familiarity with the objects, procedures and operations of the Society.

The documents indicate many persons served as members of the Board for only one year. These included the incumbent Warden of the County of Lambton. Of the many whose names appeared in the documents filed, only one served as a director in each of the six years covered by the documents produced, two served for five and several for three or four years.

From the oral testimony and the records it would appear that in most years about one third or more of the members of the Board were replaced annually. Some described the rate of turnover as "enormous." Others regarded the Board as a self-perpetuating body. Each of those views is extreme.

There was no evidence as to the qualifications for general or other membership in the Society or as to the procedure to be followed to gain such membership.

The experience of David Albert Allen as a member of the Board is perhaps typical, although he is the only one who served as a director in all six of the years covered by the documents filed upon the Inquiry and, unlike some retiring Presidents, he continued to serve on the Board after his term as President.

I am satisfied that Mr. Allen was sincere and dedicated in his service to the Society. He was deeply interested in its position and role in the community. He was very much involved in the activities of the Board. He was a good representative of the community.

The evidence indicates that he became a member of the Board on March 28, 1972 and served as President from March, 1976 to March, 1978 and thereafter continued to be a member of the Board.

He said that he had been approached initially by a colleague who was then President of the Society and by the Chairman of the Nominating Committee. He said that those persons outlined the process of election to the Board and inquired as to his interest in the Society.

Mr. Allen said that it appeared that the members of the Board brought a variety of life experiences and skills to the Board. Some of the members had been served by the Society in the past; some may have been foster parents; some may have been adoptive parents; some may have been interested because of personal interest in the affairs of the Society.

While not registered as a psychologist, Mr. Allen had been granted a Master's Degree in Psychology. He was Administrator of the Lambton County Board of Education.

Mr. Allen testified that service on the Board was a learning experience, but he did not receive any prescribed or other course of instruction as to performance of his duties and obligations. When he joined the Board, Mr. Allen had no knowledge of the powers, duties and obligations of the Society, the Board or the members of the Society and the Board. He was not then familiar with the provisions of the Act. He said he relied upon the experience of others.

Mr. Allen expressed his views as to the desirable composition of the board of directors of a children's aid society. He felt it should be a cross-section of the community. He felt that the presence of persons with professional training and skills could be helpful, but that membership on the board of directors should be open to all members of the community. He did express his view that it would be desirable to ensure that at no time were there too many new and inexperienced members of the board of directors. He felt that new members of the board of directors would require a period of time to learn the rights and powers and duties and obligations of the board of directors and its members. He felt an ideal board of directors would have a balance between persons with professional training and skills and those without. He felt the presence of too many of the former might create difficulty in securing participation by members of the community generally. He felt that the presence on the board of directors of persons with professional skills would be helpful to the board of directors. I presume his reference to professional training and skills related to training and skills relevant to the purposes and objects of a children's aid society.

The experience of Mrs. Wood is also perhaps typical. According to the documents filed, she became a member of the Board on March 12, 1973 and on the same day became the Secretary of the Society. She served as Secretary for three years and remained a member of the Board thereafter.

Mrs. Wood had been an employee of the Society from 1961 to 1965 and thereafter had, sporadically, performed volunteer services for the Society.

She held a degree of Bachelor of Arts. While she had no formal education in matters within the scope of operations of children's aid societies she did have an interest therein. During the years subsequent to 1961 she attended various conferences and seminars dealing with such subjects. From 1975 to 1978 she was employed as a case worker with the Big Sister Association in Sarnia.

I am satisfied that Mrs. Wood, like Mr. Allen, was sincere and dedicated in her services to the Society. Like him she was deeply interested in it and became much involved in the activities of the Board. She too was a good representative of the community.

Unlike Mr. Allen, Mrs. Wood, by reason of her employment with and earlier interest in the affairs of the Society and the Big Sister Association, had, before her election to the Board, some basic knowledge of the organization and operation of the Society. There was no evidence to indicate that subsequent to her appointment as Secretary of the Society or her election to the Board she received any instruction as to the performance of her various duties.

Mrs. Wood's view as to the desirable composition of the board of directors of a children's aid society was quite different from Mr. Allen's. She felt that a board of directors composed of volunteers left much to be desired. It was not clear to me whether or not she advocated that members of the board of directors should be remunerated for their service as directors, but the tenor of her remarks seemed to suggest that she was so inclined.

Mrs. Wood's observation was that, as the situation was in the Society, the Board was separated from the main stream of the operations of the Society.

She said there was an ineffective system of reporting and accountability by the staff of the Society to the Board.

Mrs. Wood's opinion was that the existing organization of children's aid societies created various levels and thus divisions among people who should be working toward the same goal, but who sometimes seemed not to be working that way.

Mrs. Wood was particularly critical of the existing method of appointing representatives of municipal councils to the board of directors of children's aid societies. She felt that in many instances such representatives served for only one year and thus did not have sufficient opportunity to develop interest in and knowledge of the operation of the children's aid society. Her observation was that such representatives were interested in controlling expenditures with too little regard for the service provided by the children's aid society to children and families in the community.

Mrs. Wood's observation of some members of the Board was that they were not sufficiently interested in the affairs of the Society to ask questions or to ask for materials to assist them or even to pick up from the boardroom table copies of pamphlets placed there for them. Her assessment of members of the Board was that some did not possess sufficient knowledge of the operations of the Society to enable them to perform their duties properly and fully. She felt those duties included assessment of and accountability for the performance of the Society.

Mrs. Wood's view was that some of the problems of the existing composition of the board of directors of a children's aid society could be resolved if, in seeking nominees for election as directors, the nominating committee sought out persons interested in the welfare of children, preferably person with backgrounds in social services. She felt that retired or unemployed social workers, foster parents and employees of the children's aid society would be good members of the board of directors. She felt their knowledge would provide greater and better information to the board of directors and lead to better decisions by it.

Mrs. Wood said that in the City of Sarnia and the County of Lambton there had been difficulty in persuading people to serve on the Board.

The documents filed upon the Inquiry in part support Mrs. Wood's comments as to the tenure of representatives of the municipal councils upon the Board. It seems that most often one of the nominees of the County Council was the incumbent Warden and that member changed annually. But one apparent nominee of a municipal council, Alderman M. Brown, was a member of the Board for at least three years. John Harris McPhedran, who became President of the Society in 1978, was a nominee of the Municipal Council of the City of Sarnia elected as a director of the Society on January 1, 1975. He remained a member of the Board for at least four years. The documents and oral testimony do not enable me to identify any other representative of the municipal councils.

Mrs. Wood expressed concern that the task of the local director of a children's aid society was complex and difficult. She felt that a local director was under too many pressures and obligations some of which were competing or conflicting. She suggested that those pressures and obligations came from or were owed to the Ministry, the municipal councils as represented by their nominees on the board of directors of the children's aid society, the board of directors and even the employees of the children's aid society particularly as represented by any staff association.

Mrs. Wood was so concerned about what she and, she felt, the Board perceived to be problems within the Society from time to time that in 1975 or 1976 she spoke to Mr. Lovatt and to the Board about the possibility of inviting the Child Welfare League of America to send representatives to visit the Society and to assess its organization and performance. She said Mr. Lovatt's opinion was that the Society could not afford the expense, but the Board seemed to be favorably inclined until the financial restraints of the Provincial Government and the Ministry were announced and applied. The suggestion then lapsed.

There was no evidence as to what costs might have been involved had the Board decided to adopt Mrs. Wood's suggestion.

Mrs. Wood in her testimony spoke of her belief that Mr. Lovatt was overburdened by reason of responsibilities assigned to or assumed by him. She said that from time to time she had sought to relieve him of some rather simple tasks, such as arranging for meetings of committees of the Board. She said he and other management personnel did not appreciate her gesture. She was discouraged from offering assistance.

Mr. McPhedran, who succeeded Mr. Allen as President of the Society in 1978 was President when he testified upon the Inquiry.

He brought a third type of background and experience to the Board. He was an employee of the Government of Canada engaged in analysis of employment markets and local economic trends. He had been a member of the Board of Directors of the Children's Aid Society of Oxford County from 1972 to 1974. He had an ongoing interest in children's aid matters over the years.

Like Mrs. Wood and Mr. Allen, Mr. McPhedran was sincere and dedicated in his service on the Board and was deeply interested and involved in the affairs of the Society. He too was a good representative of the community.

Mr. McPhedran expressed his view that it was difficult for a children's aid society of a size such as that in the City of Sarnia and the County of Lambton to obtain volunteer members of the board of directors who were knowledgeable of, and thus able to make reasonable decisions on, policy issues in the area of children's aid matters. He felt that without such prior background knowledge the task of the individual member of the board of directors was made much more onerous. He felt that without that prior knowledge a member of the board would be required to work very hard to enable himself or herself to fulfill the demands of membership upon the board of directors.

Mr. McPhedran's assessment of the Board, as I interpreted his testimony, was that few were knowledgeable of the affairs of the Society and had considerable length of experience of service as members of the Board. The result, as he saw it, was that a relatively small number of knowledgeable and experienced directors influenced and effectively made the ultimate decisions of the Board. He felt that this came about because of the default of other less knowledgeable or experienced members of the Board. Mr. McPhedran felt his view corresponded to that expressed in the Hanson Report in 1973 and 1974.

Mr. McPhedran's view as to the desirable composition of the board of directors of a children's aid society was in some ways similar to and in some ways different from the view of each of Mrs. Wood and Mr. Allen.

Mr. McPhedran shared Mrs. Wood's view that some members of the board of directors of a children's aid society should have "professional social work" experience. He did not define what he meant by "professional social work" experience. He felt that, in addition to such members, the board of directors should be composed of local citizens and elected local officials. He recognized that any provision for the presence of elected local officials could and did lead to frequent changes of personnel and thus, to a degree, a lack of continuity of representation and of attendance at meetings because of conflicting commitments. He felt that, because of the small impact of the children's aid societies' operations upon the municipal budgets, service on the board of directors of the children's aid societies was not of great importance in the scheme of things for those involved in municipal government.

Mr. McPhedran believed that the presence of members with professional expertise would enable the board of directors to assess more accurately the performance of the children's aid society and its personnel in the various fields of service to the community. He felt their presence would be helpful to the board of directors in establishing and maintaining relationships with the public and with other community resources and with government.

Mr. McPhedran felt that there was an element of self-perpetuation by the members of the Board who became very involved in the affairs of the Society. As I have done in a different way, he reviewed the persons who had been members of the Board in 1975, 1976 and 1977. He said that of the twenty-one who formed the Board in 1975 only nine were members of the Board in 1978. He said only five of those nine had been on the Board for more than five years. He said no elected official who was on the Board in 1976 was still on the Board in 1978.

Mr. McPhedran attributed part of the rate of turnover to the fact that the population in the area served by the Society was itself quite mobile with large numbers of employees of corporations moving to or from the area.

Mr. McPhedran expressed the view that, in many areas of the operation of the Society, the Board did not fulfill its responsibility. He felt that that default then left it to the Local Director, Mr. Lovatt, to assume greater responsibility in the areas of policy and management than he should have been expected to assume. He felt that the responsibility given to the Board under the Act required the members of the Board to be more involved in a knowledgeable appraisal of the operations of the Society.

Mr. McPhedran felt that, in part at least, default such as I have mentioned in the preceding paragraphs, occurred because well-intentioned persons accepted election to the Board without adequate awareness or knowledge of what was involved and what was expected of them. He felt the default came about because such directors did not, after election to the Board, receive adequate training or instruction as to their duties.

Mr. Wryzykowski, in brief testimony, introduced a somewhat different perspective. He had been a member of the Board for about eight years. In 1971 and 1976 during the last two years of his tenure he was President.

Like the more recent members of the Board who testified he was a responsible and interested member of the community. He was a respected member of the bar. He had a great interest in organizations assisting families; his greatest interest was in the well-being of children.

Like the others he received no training or instruction as to the duties and responsibilities of a member of the board of directors of a children's aid society. He received no instruction as to the provisions of the Act. The manual published by the Ontario Association of Children's Aid Societies was not prepared until after he ceased to be a member of the Board.

He had not realized the full extent of the obligation and responsibility assumed by the Board and its members. Like Mr. Higgins, he doubted that he or any other person would have become a member of the Board had he or she had that realization. He did not elaborate upon his perception of the extent of the duties of the Board.

Mr. Wryzykowski testified to his high regard for the dedication and service of the members of the Board. He stressed that they were not trained as social workers. He felt they should not bear any responsibility for the management of individual cases by the staff of the Society. His view was that the Board's role was to establish general policy and to assist the staff of the Society to provide the services required of the Society.

Mr. Wryzykowski's recollection was that no individual case was, by name, brought to the attention of the Board.

Mr. Wryzykowski testified that during his eight years of service he thought the Board had had a good relationship with Mr. Lovatt and Mrs. Harvey. He said the Board thought highly of them, but, like the others who testified, he acknowledged a personal lack of ability to assess their qualifications for their positions.

Mr. Wryzykowski testified that he had become somewhat disenchanted when the financing of children's aid societies was changed and the Provincial Government became more involved therein. He said that from then on he lost interest in the financial aspects of the Board's function. In that latter he seems to have been unique among the members of the Board and even of the staff.

Mr. Wryzykowski, drawing particularly upon his experiences as Area Director of Legal Aid, mentioned the differences that existed in and among the areas and municipalities of Ontario. He thought that municipalities required children's aid societies providing services designed to meet the local needs and demands. He felt local boards of directors were important in recognizing those needs and demands.

Mr. Higgins' experience as a member of the Board was somewhat different. In his professional practice as a barrister and solicitor he had had limited experience with matters which involved the application of the Act. They related primarily to the obligations of municipal corporations to reimburse children's aid societies for certain expenses.

Early in 1976, Mr. Higgins was approached by Mrs. Harvey and consented to his name being put in nomination for election to the Board.

I am satisfied that Mr. Higgins gave that consent in the same spirit that the other directors who testified had given their consents. He too was an interested and concerned public spirited citizen. He had the skills and knowledge of the practice of law which could generally be helpful to the Board in its general government of the affairs of the Society. He was prepared to apply that skill and knowledge as a member of the Board.

I am satisfied he had no ulterior or improper motive in giving that consent. Specifically, I am satisfied that his retainer by Jennifer Popen and Annals Popen was not a consideration in his mind when he gave that consent.

Mr. Higgins did not become as deeply involved in the affairs of the Society as did Mrs. Wood and Messrs. Allen and McPhedran. His attendance at meetings of the Board was irregular. He attended only six of seventeen meetings of the Board held while he was a member of the Board. He could remember attending only one committee meeting. He said that he, like others, did not do much work by way of preparation for meetings of the Board.

Mr. Higgins did not receive a copy of the manual prepared in 1975 by the Ontario Association of Children's Aid Societies entitled "A Working Manual For Board Members of Children's Aid Societies." He did not receive a copy of the Act. He did attend one meeting intended to provide orientation for newly elected members of the Board, but he did not find it particularly helpful. He felt it was quite general in nature. It did not make any reference to child abuse.

Mr. Higgins' observation of other members of the Board was that all of them were interested in children, but some worked harder than others as members of the Board. As I would have expected from the evidence of others as to the pervading concern with financial matters within the Society, Mr. Higgins testified that he felt the Finance Committee of the Board was composed of hard working members.

Mr. Higgins relied on the Local Director and other employed personnel of the Society to ensure that the Society properly performed its obligations and duties. He did note that Mr. Lovatt seemed to be operating under considerable difficulty relating to the provision of funds for the programme of the Society.

Mr. Higgins seemed to share the concern of others in the Society as to financial matters. He perceived his role as a member of the Board as being a watchdog for the community to ensure that money was wisely spent.

Despite his training and experience in the practice of law, Mr. Higgins acknowledged that, until the Inquiry, he was not fully aware of the various provisions of the Act particularly those which imposed duties and obligations upon members of the boards of the directors of children's aid societies. He said that had he been aware of those provisions he would have declined the opportunity to serve on the Board.

As I have noted, members of the Board, including Mr. Higgins, relied upon the staff of the Society. In that context it is interesting to note a portion of Mrs. Harvey's testimony.

Mrs. Harvey was asked if she had proposed to Mr. Lovatt that Mr. Higgins become a member of the Board. She replied that she had and continued her response as follows:

> "A. We didn't have a lawyer on the Board and the Annual Meeting was coming along in March.

Q. '76.

A. I guess it, yeh, March '76. Mr. Higgins had talked with me from time to time in the Court while the hearings were going on and being adjourned or what not, and while he was fighting me he was doing a good job on behalf of his clients, as his clients, and I thought if I can get a scrapper like this to work as hard for us as against us we will have gained a great deal of support from a good legal person on the Board, and Board Members always need to be trained anyway so I thought we could train him and educate him and have him more helpful to C.A.S. in the future. But he was a good legal person and we needed one on the Board."

Thus, Mrs. Harvey felt that members of the Board required training or education in the performance of their duties and that the staff had an obligation in that regard.

If one with the skills and experience which Mr. Higgins had required training and education, it would seem reasonable to surmise that others, without such skills and experience or other skills and experience directly related to child welfare matters, would require training and education as members of the Board.

I am satisfied that there was little organized effort by the Board to obtain or by the Ministry, Mr. Lovatt and the supervisory staff of the Society and other staff to provide such training and education.

Mr. Allen testified that he relied upon the experience of others. He felt that until the circumstances of Kim's death became known to the Board, beginning in December, 1977, the Board was generally concerned with the financial affairs of the Society and general management issues.

He said that some members of the Board had become knowledgeable in certain areas of the Society's operations including financial and personnel staffing matters or other matters brought to the attention of the Board, perhaps by complaint voiced in the community as to the level or standard of service.

Mr. Allen felt the Board would have become involved in a particular case only if there was any complaint of any lack or failure of service by the Society in that particular case.

It was clear to me that Mr. Allen was not aware of any such complaint in respect of Kim's case until December, 1977.

Mr. Allen testified that he had felt a degree of satisfaction with the financial management of the Society, and particularly that in 1977 the Society's financial statements indicated a surplus. But, he said, there was always present a climate of insufficiency of funds, staff and time to do what was required. He said he sensed

> "that one had to do battle with government in order to obtain the necessary funds."

He said the 1977 surplus came about because in that year the Society had not taken into its care as many children as had been anticipated. He felt that the presence of a surplus was unfortunate because it existed at a time when the demands upon the Society for provision of service were increasing.

Mr. Allen regretted the existence of that feeling of tension with government because, in his opinion, restraint upon the Society for financial reasons would place the Society in a more dangerous position. I think he meant by that that the clients or potential clients of the Society would be more exposed to danger if the Society lacked the funds and personnel required to meet the demands upon it for services.

The members of the Board who testified expressed some concern as to the ability of the board of directors of a children's aid society, composed essentially of laypersons, to perform and fulfill adequately the duties and obligations which should be borne by the board of directors. From that concern they developed some views as to the role of the Ministry and the relationship between the Ministry and the boards of directors of children's aid societies.

Mr. Allen expressed the view that the Ministry should assume a greater role in auditing, reviewing, monitoring and assessing the procedures, policies and case management practices of children's aid societies. He felt that should include a review of records and files and of the processes involved in decisions made in individual cases.

Mr. Allen felt that the Ministry should report annually to each children's aid society. In his opinion such a report would lead to consultation and discussion between the Ministry and the local society with reference to any areas of concern or of differences of opinion. He thought that the existence of such review, assessment and reporting procedures by the Ministry would obligate, encourage and assist the local society to pay closer and more effective attention to its function. Thus the services provided by the local society would more adequately meet the needs and demands of the community.

Mr. Allen testified that in the years of Kim's life and his membership upon the Board, the staff of that Ministry did visit the Society. He testified that he felt confidence in the ability of the Ministry's personnel who did visit the Society. He believed there was a good relationship between them and the staff of the Society. Despite all of that he regretted that the Board did not receive much, if anything, in written form from the Ministry or its staff. He felt that the Board should have received from them some assessment of the overall management and performance of the Society.

There was no indication in the testimony of any of the members of the Board that the Board or any of them as individuals had ever expressed in any way to the Ministry or any of its staff the desire or need of the Society for any such review, assessment or report.

It may very well be that that absence of expression of desire or need flowed from the inability of the Board as a board and its members as individuals to assess the performance of duties and obligation by the Society as an entity and by the employees, particularly the Local Director of the Society, as individuals.

When asked about the ability of the Board to make any such assessment, Mr. Allen referred only to an examination of the financial position of the Society and what might flow from that. He said he felt confident that the financial operations of the Society were well-managed.

As he developed that particular response he recognized that financial or budgetary results might not provide any adequate assessment of the overall performance of a social agency such as the Society.

On all of the evidence I am satisfied that newly elected members of the Board received little, if any, instruction as to the nature of their duties, obligations and powers.

A document entitled "A Working Manual For Board Members of Children's Aid Societies" has been available to members of the Board, but there was no firm testimony as to how many members of the Board obtained a copy or were aware of its being available. It was first printed in 1975 and has been revised. It was prepared and published by the Ontario Association of Children's Aid Societies.

Mr. Allen testified that that document outlined the role and responsibility of children's aid societies. He felt that some members of boards of directors of children's aid societies might have some difficulty understanding it. He suggested that some, on reading it prior to coming upon a board of directors, might decide to decline election to the board of directors.

That latter comment is rather akin to the sentiment expressed by Mr. Higgins to the effect that had he, prior to his election to the Board, been aware of certain provisions in the Act he would not have consented to become a member of the Board. If Mr. Higgins, a competent, skillful and experienced barrister and solicitor, was unaware of all of the implications of membership upon the Board it seems reasonable to conclude that others, not so trained and experienced, would be less aware of those implications.

I am satisfied that membership upon any committee of the Board resulted from whatever special interest that a member of the Board might have in the matters specifically dealt with by the particular committee. The exact organization, structure, role and procedure of each of the committees was not clearly defined in the documentary or oral testimony.

I am satisfied that, in the main, the Board concerned itself with the affairs of the Society in only the broadest of terms. The members of the various committees would deal somewhat more specifically with the areas falling within the ambit of the committees. Three committees which I recall were mentioned in testimony were the Executive Committee, the Services Committee and the Finance Committee. From the tone of the testimony given by those members of the Board who testified upon the Inquiry, I gathered that the Finance Committee and its areas of concern along with matters of staffing attracted the greatest attention of the Board.

As to the other committees, I gathered, from the absence of detail as to their organization and function provided by the directors who testified, and from the specific uncontradicted evidence of Harry Zwerver, that those committees existed primarily on paper. They met seldom if at all.

The by-laws of the Society assigned specific responsibility only to the Executive Committee. The Act requires the directors of a children's aid society to pass a by-law providing for the election of an executive committee and for the delegation of powers to it in the discretion of the board of directors.

The by-laws of the Society did not delegate any powers to any other committee.

I am satisfied on the evidence that the Board did not concern itself in any way, either as the Board or through a committee of the Board, with the management of individual cases. Mr. Allen in his testimony "guessed" that the Board would become involved with the specific details of a case if some complaint as to the handling of the case by the Society was brought to the attention of the Board. From Mr. Allen's use of the verb "guess" I can only presume that during his tenure on the Board no such instance had arisen.

Apart from any special meetings, the Board met regularly on a monthly basis, except for July and August. Mr. Lovatt, as Local Director of the Society, regularly attended those meetings. Other members of the staff of the Society, especially the supervisors, attended some of those meetings, particularly if they had some special interest in any matter to be discussed. Those matters usually related to salaries, staffing and the workload or caseload of the Society in general and did not relate to specific identifiable cases within the Society.

Mr. Lovatt prepared monthly reports upon the operation of the Society. Those reports were submitted to and discussed at the meetings of the Board.

Throughout the testimony of those members of the Board who testified upon the Inquiry, and indeed throughout the evidence of other witnesses familiar with the organization and operation of children's aid societies and similar bodies, there were some common threads.

One such thread was that, in the main, the Board, like the boards of directors of other similar bodies, was dependent upon the Local Director as a source of information and expertise generally in relation to the operation of the Society. Unless the Local Director brought something to the attention of the Board it was unlikely that the Board would learn of it. One of the recognized duties of a local director of a children's aid society is to keep the board of directors informed as to conditions within or relating to the children's aid society and as to any need to formulate any policy or procedure.

Mr. Allen in his testimony acknowledged that it would be correct to say that the Board and its committees were "pretty well at the mercy of the Local Director and his staff" as to what information was received.

A corollary of that common thread was expressed by the members of the Board who testified. That was a confidence in and reliance upon the capabilities and skills of the employees of the Society.

I am satisfied that, while the Board's ignorance of the Society's involvement in Kim's life is a flagrant example of what could flow from such a dependence and reliance upon the staff, it is only an example. I am not confident that there were not other situations and problems less glaring, less tragic than Kim's which existed and of which the Board and perhaps even the staff generally of the Society was unaware.

Harry Zwerver, who was appointed by the Ministry in March, 1978 to be a Special Field Consultant responsible for the operation of the Society, voiced a similar and perhaps an even greater concern as it related to the situation within the Society shortly after his appointment.

When asked his view as to what might occur in Sarnia or the County of Lambton in light of his review of the state of files within the Society he replied:

> "I was concerned that there might, in fact, be children in the community that were or had been abused in the past or where abuse could occur in the future, and where the Society was not actively involved in dealing with that situation. There were times when it felt like everytime we scratched the surface of something we would find something else and I think both Mrs. [Pauline] Mabel and I felt most discomforted in reading some of those files and, you know, became very apprehensive about what, in fact, could possibly happen. The question was put to me by the Board of Directors in fact as to whether situations similar to the Kim Anne Popen case could occur, and at that point in time it being only about three weeks into my being there, I certainly could not guarantee them that it could not occur not having total knowledge of all of the cases obviously at that time."

A second such common thread was that the Board, composed primarily if not entirely of persons without training or life experience in social work, was unable independently to assess the performance of the Society as an entity or of the Local Director or any other employee as an individual. They were unable independently to assess the quality or adequacy of the services delivered by the Society to the children and families of the community. But the need for assessments of staff services was acknowledged.

Mr. Higgins perhaps put it as succinctly and as well as any. He said that at any meeting of the Board which he attended there was no discussion of the performance of professional duties by the employees of the Society. He felt that the employees of the Society who had training and skills in social work bore the responsibility for the proper performance of professional duties by the staff. He said he was not qualified to assume that responsibility. In his opinion other members of the Board were similarly not qualified, but were sincere and interested members of the Board and wanted to assist the Society to fulfill its mandate in the community.

Assessment of the qualifications and performance of lower echelon employees of the Society were prepared regularly and were maintained in the personnel records of the Society. They were prepared primarily by the supervisory employees. I presume they were available to the Board if required. There was no testimony to indicate that the Board even reviewed those assessments.

There was no evidence to indicate that assessments of the qualifications and performances of supervisory personnel of the Society were prepared regularly if at all. I am satisfied that no such assessment with reference to Mr. Lovatt was prepared by anyone and made available to the Board subsequent to the confirmation of his appointment as Local Director in or about 1968.

A third such common thread was that there was little contact between the Board and the Ministry except in areas related to preparation, submission and approval, in whole or in part, of annual budgets or estimates.

Mr. Allen's testimony was to the effect that any contact between the Board and the Ministry and its staff, other than in relation to budgetary matters, was quite informal. He said that personnel from the Ministry had visited the Society, but their contact was primarily with the staff, including the Local Director, and not with the Board. He said that personnel from the Ministry did, on occasion, attend with the Board and would provide oral responses to any questions raised by members of the Board.

Mr. Allen understood that the Board received no formal or written reports from the Ministry following the visits of Ministry personnel to the Society. He understood that, apart from those oral responses and the comments upon proposed budgets, the Board received no reports from the Ministry pertaining specifically to the operation of the Society.

It would seem that Mr. Allen is somewhat in error since the Society did receive what are essentially statistical reports following visits by Ministry personnel for one week in each of the years 1972 and 1973. However, while those reports were entitled "Report to the Board on Child Welfare Surveys" the procedure within the Society was that Mr. Lovatt prepared a summary of each such report and only that summary was read to the Board. In any event such reports were not assessments of the operations and staff of the Society in any sense.

Mr. Allen testified that in his years with the Society the Ministry had not, to his knowledge, made to the Board any statement indicating any shortcoming in the operation of the Society or in the performance of its personnel. He said the Board did not receive from the Ministry any statement as to or assessment of the quality, adequacy or nature of the services provided by the Society to the community. No evidence was led by anyone to contradict or diminish the force of that testimony.

Mr. Allen acknowledged that the Board had not requested the Ministry to provide to the Board any assessment of the operation of the Society and the services provided by it or any assessment of the performance of any employee.

The evidence presented upon the Inquiry did not indicate that the Ministry in any way, perhaps apart froms its contribution towards the Ontario Association of Children's Aid Societies and that Association's publication of the manual for board members, attempted to inform or instruct members of the Board as to their duties and the performance thereof or as to the overall role and operation of the Society including assessment in any way of the manner in which the Society and its personnel fulfilled or failed to fulfill its mandate.

Conversely, apart from Mrs. Wood's testimony as to her abortive effort to obtain an independent appraisal of the operation of the Society, there was no evidence to suggest that any effort was made by the Board or any of its members to obtain any information or assistance from the Ministry or elsewhere.

I accept Mr. Higgins' testimony that he acted as a member of the Board in the same way as he acted while a member of the boards of directors of other public spirited organizations in the community. I think other members of the Board acted similarly. Assuming those who testified upon the Inquiry were generally representative of the members of the Board, the Board as an entity and its members as individuals were anxious to perform a public service and to perform it well.

I am unable to understand how, apart from their confidence in the integrity and competence of the staff of the Society and of the Ministry and their confidence that those people would inform them of any problem or shortcoming, the members of the Board were not aware of the existence of problems and weaknesses such as those which Mr. Zwerver, Mr. McCabe and the members of the committee under the chairmanship of Mrs. Farina so quickly discovered in 1978.

I appreciate that when Mrs. Farina and the various gentlemen I have mentioned visited or served in the City of Sarnia and the County of Lambton in 1978 the situation within the Society had developed far beyond what it was prior to the trial of Annals Popen and Jennifer Popen in December, 1977. Staff morale must certainly have been affected by all that happened in the aftermath of that trial.

Having said that the fact remains that all was not well in the Society prior to that trial and during Kim's lifetime. The Board must bear some responsibility for that. In assuming membership upon the Board they assumed the responsibility for governing the Society.

The Society employed persons with professional or quasi-professional qualifications. It operated under the authority of the Act and, presumably, received from the Ministry, through the office of the Director of Child Welfare the advice, supervision and inspection mentioned in that Act. Therefore I accept that ordinarily citizens such as they, serving voluntarily as directors of an organization such as the Society, might reasonably depend upon the staff of the Society and of the Ministry to ensure the provision and maintenance of the basic components of a good and proper operation of the Society by duly qualified personnel.

Mr. Allen in his testimony spoke of the sense of battle with government to obtain necessary funds. He spoke of confidence in the management of the financial aspects of the Society's operations. At the same time that there was in the Society that climate of insufficient funds and staff there was, in 1977 at least, a budgetary surplus.

The contradiction of the apparent shortage of funds in the face of a surplus of some $12,000.00 in 1977 was illustrated by one area of Mr. Zwerver's testimony. It was ludicrous. He testified that upon or very shortly after his arrival in Sarnia in March, 1978 he found that some office supplies were lacking. There was no writing equipment such as pens and pencils. There were no writing pads; so internal memoranda were written on the backs of blank cheque forms. There was no notebook paper for the staff to use for case notes. There were no binders to hold whatever case notes might have been written.

Employees of the Society had mentioned to Mr. Zwerver that there was a concern among the staff regarding such lack of supplies. Mr. Zwerver testified that, when he inquired of Mr. Lovatt as to why that lack existed, Mr. Lovatt's response was that the Society could not afford to buy them. What a sorry statement. What a sorry state of affairs for the Society.

Mr. Zwerver's opinion was that, with an overall surplus of $12,000.00 and a total budget of about $600,000.00, an expenditure of, say, $200.00 over the budget allocation for office supplies would not have created any problem between the Ministry and the Society. His belief, which was not contradicted by any other testimony, was that while the Ministry required examination of each budget item separately before approval and each amount was approved separately the local children's aid society then, after budget approval, was responsible for and was allowed discretion in the allocation of funds; so some of the surplus could have been used for office supplies.

The evidence showed that proposed budgets submitted by the Society to the Ministry were not always accepted and approved in total by the Ministry. Sometimes the Ministry required explanations of particular items. Mr. Allen was aware that Mr. Lovatt was greatly concerned with and involved in the financial and budgetary concerns of the Society.

I accept that there was no malfeasance or misfeasance in the financial affairs of the Society. No monies were stolen or embezzled. No monies were expended other than for the proper and lawful purposes of the Society. That type of situation is not an element in any of my considerations.

I accept that, if the goal of the administration of the Society was to provide service to the community at a low cost in relation to the population of the community, the Society performed very well in relation to other children's aid societies in Ontario. But per capita costs do not provide any assessment of the quality of service provided to the community.

I accept too that the salaries paid by the Society to its employees were competitive with salaries paid by other children's aid societies in Ontario. I accept that in some areas the so-called package of fringe benefits was more generous than in many other children's aid societies. But competitive salary packages do not necessarily ensure corresponding personnel qualifications.

It would seem that the financial administration of the Society did not merit the confidence that Mr. Allen and, presumably, the Board had in it. The Board does not bear the entire responsibility for that situation. Mr. Lovatt in my opinion must bear the bulk of the criticism in this area. He did not keep the Board fully and properly informed. Other staff, particularly supervisory staff, must also share responsibility. They too did not inform the Board of any financial concerns.

But the Board did nothing to seek to resolve the areas of the financial concerns of which it was aware or of which it ought reasonably to have been aware. The Board did not initiate any discussion with the Ministry to seek some means of alleviating the feeling or sense of battle with the Ministry to obtain funds. The Board did not initiate any review of the financial affairs of the Society to seek to ascertain why, particularly in the face of the surplus available in 1977, supplies essential to the operation of the Society were not available to its staff.

It is incomprehensible that no member of the Board was aware that basic inexpensive items such as pens, pencils, note-paper and binders were not available to the staff. If indeed no member of the Board was aware of that situation then truly the Board was far removed from the operation of the Society as was suggested by Mrs. Wood in her testimony.

The situation of the Society must indeed have been in a sorry state if members of staff could and did attend meetings of the Board, but, apparently, not advise the Board that pens, pencils and paper were not available for them to make proper notes. That is a sad commentary upon the affairs of the Society. The Board along with the staff, including Mr. Lovatt and the supervisors from time to time, must bear responsibility for it.

I am prepared to accept that one of the duties of the local director is to keep the board of directors informed as to all elements of the operation of a children's aid society. The Act in section 4 provides that the local director is responsible to the board of directors for the administration and enforcement of that Act and the regulations thereunder. The local director is required to co-operate with the Director of Child Welfare to that end. He is also required to carry out such other duties as may be required by the children's aid society.

I am prepared to accept that the normal communication by staff personnel to the board of directors of a children's aid society would be through the local director. Even so the board of directors might reasonably be expected to have made provision for an avenue of communication to it from supervisory staff in the event the local director failed to pass to the board of directors any information the supervisory staff felt should be given to the board of directors. Similarly it is reasonable to expect that there would be some avenue of communication from junior personnel to the board of directors in the event supervisory staff and the local director failed to pass to the board of directors any information flowing from junior personnel.

In the present instance there was no evidence to indicate that the Board had procedures to ensure that it received any information of whatever sort from supervisory staff if Mr. Lovatt chose to withhold it from Board or from junior staff persons if either Mr. Lovatt or supervisory personnel chose not to pass it to the Board.

The members of the Board who testified said that the Board depended upon Mr. Lovatt for information and advice upon the operation of the Society. That is as it should be. But, in my opinion, the Board should have adopted procedures which would have ensured that it received all information relevant to the performance of the Board's role.

Mrs. Kathy Mitchell, a former employee of the Society, testified upon the Inquiry. She had had some involvement in the field of social work, but had no particular training or expertise as a social worker. She was employed by the Society as co-ordinator of its volunteer services from October, 1974 until December, 1977. Mrs. Mitchell had no direct involvement with Kim's case, but it played a major part in her decision to resign her position with the Society.

Mrs. Mitchell testified that she had felt all was not well in the Society. She spoke of dissension between departments and grumbling among employees. That dissension and grumbling preceded Kim's case, but, she said, they were "magnified" by it.

Mrs. Mitchell testified that there was not good communication between the Board and the staff of the Society. She spoke of attending meetings of the Board at which the Board would take certain action and of being present later when that action was discussed by the staff. She said that sometimes, when interpreting the Board's action to the staff, the supervisory staff, particularly Mr. Lovatt, did not properly put and explain the Board's action in the way Mrs. Mitchell, having heard the matter at that Board meeting, felt it should have been put and explained. Sometimes when the Board responded favourably to a request from the staff, as to a request that minutes of Board meetings be posted in the staff area not accessible to the public, the Board's favourable response was not promptly revealed to the staff.

Mrs. Mitchell had a friend who was a member of the Board. They discussed matters of mutual interest or concern at the Society. Mrs. Mitchell felt that those discussions tended to confirm her belief that the communication between the Board and staff was not good. She said that it seemed that neither the Board nor the staff really sought any improvement.

To illustrate this problem in communications, Mrs. Mitchell spoke of Kim's case and the effect it had on her position.

As co-ordinator of the Society's volunteers, she approached members of the public. After Kim's case became a matter of public knowledge in later 1977 she found that she encountered some difficulties in those approaches. She felt she was unable to provide adequate answers to questions about the case. That inability was rooted in her belief that she and others, members of the Board and of the staff, had not received full and fair answers to questions about Kim's case which she and they had put to Mr. Lovatt and Mrs. Harvey.

At a meeting of the staff, Mrs. Mitchell sought information to enable her to respond to questions which had been asked by members of the public. She felt that the answers given to her questions, particularly in the light of rumours she had heard within the Society, were not satisfactory or honest. That comment related specifically to answers made by Mr. Lovatt and Mrs. Harvey. She said that what she had heard of testimony given upon the Inquiry had confirmed her beliefs at that time, particularly her feeling that the decision to return Kim to her parents' home was not really a "joint decision" as Mrs. Harvey and Mr. Lovatt stated.

Later there was a meeting of the Board and again Mrs. Mitchell felt the questions put by members of the Board and of the staff who attended were not fully answered. From the context of her testimony, I believe this was the Board meeting of December 15, 1977. She said she felt the answers given by Mr. Lovatt and Mrs. Harvey were not honest in that they gave to the Board the impression that the Society had acted properly in returning Kim to her parents' home. She said the answers were incomplete. She remembered particularly answers given in attempts to explain away discrepancies in various documents and reports.

Mrs. Mitchell said morale problems within the Society were a factor contributing to her decision to resign.

Mrs. Mitchell testified that towards the end of her employment, perhaps about the end of September, 1977, she spoke to Mr. Allen, then President of the Society, to advise him of the problem of communication between the Board and the staff. There is nothing to indicate that the Board undertook any remedial action after that discussion.

The Committee chaired by Mrs. Farina also noted the problem of communication between the Board and the staff. They wrote in their report, in part, as follows:

> "We are told of poor relationships between staff and board, with little communication or real understanding of each other's roles, authority and functions. There seemed to be no clear channels of communication within the Society and no clear means by which board members can know or understand the working of the Society or the problems and needs of staff, including foster parents. We note especially that Board were not formally informed of the Popen case until it was reported in the press (December, 1977). There seems to be a repressive atmosphere and indeed, we found some staff members we interviewed stating to us that they were hesitant to come because of fear of reprisals against them. Whether this is so or not is less important than the fact that the feeling was present and was stated in these terms. There seems to be little feeling of loyalty or committment to the organization."

In similar vein, those members of the Board who testified upon the Inquiry spoke of the inability of the Board and its individual members to make any assessment of the manner in which the Society was performing its statutory obligation under the Act. They spoke also of an inability to assess the performance of duties by staff members particularly Mr. Lovatt.

I am sure that the Board's recognition of those inabilities existed prior to December, 1977. But there was no evidence that the Board did anything to seek to remedy the situation.

Mr. Allen's testimony shows that he was aware that the Society could have requested the Ministry to provide an assessment of the quality of the service provided by the Society. I presume Mr. Allen was not the only member of the Board or its advisors, particularly Mr. Lovatt, who was aware of that. During Mr. Allen's tenure on the Board no such request was made of the Ministry.

Mrs. Wood's testimony shows her interest in this area and her efforts to obtain an independent evaluation of the services provided by the Society.

That occurred in 1975 or 1976. The proposal was presented to the Board, but, on the evidence, it was not acted upon because of the imposition of the financial restraints by the Province of Ontario. There was no testimony to indicate that any effort to obtain any funds necessary to obtain such an evaluation was made or even contemplated by the Board.

That inability of the Board itself to assess the operation and performance of the Society and its staff, its failure to seek such an assessment by the Ministry and its failure to pursue vigorously Mrs. Wood's proposal for such an assessment existed notwithstanding that the Board, or at least some of its members, knew that the duties of the Board included evaluation of the Society's performance and the qualifications of its staff.

The Act requires every children's aid society to provide at least the standard of services prescribed by the regulations. The Act imposes on the board of directors of each children's aid society the obligation to govern that society. In my view those statutory provisions impose on the Board a duty to ensure that the services provided by the Society meet the requisite standards and that necessarily involves an evaluation or assessment of those services and, indirectly, of the persons employed by the Society to deliver them.

During Kim's lifetime the Board did not, for whatever reason, make, request or obtain any such assessment or evaluation other than what may have been incidental to Mr. Lovatt's regular reports. From what few I saw of Mr. Lovatt's reports to the Board they contained no such assessment or evaluation.

The Board does not stand alone in this area of criticism. Mr. Lovatt's reports were of no real assistance or guidance to the Board and perhaps even engendered an ill-founded sense of confidence or assurance. The Ministry, as represented by the Director of Child Welfare and the staff of the Ministry employed in the Child Welfare Branch did not during Kim's lifetime make any assessments or evaluations of the services provided by the Society or of the performance of any of its personnel, especially

Mr. Lovatt. During Kim's lifetime no one from the Ministry advised the Board of any problem within or shortcoming of the services provided by the Society.

I have mentioned earlier the booklet entitled "A Working Manual For Board Members of Children's Aid Societies."

Had the members of the Board read that manual it would have alerted them to a number of things in this area. The manual suggests various sources of information which might be used by a board of directors in evaluating the performance of a children's aid society.

One of those suggested sources of information was the local director's reports. I am satisfied that Mr. Lovatt did make regular reports to the Board. In light of the testimony presented upon the Inquiry, the sufficiency and accuracy of those reports may be suspect.

Copies of six of those monthly reports were filed as an exhibit upon the Inquiry. Each report, with one exception which had five lines on a second page, was one page or less in length.

The reports filed as an exhibit included those for September and October, 1976. Neither referred in any way to Kim's case. Even though the September report set forth the number of children who had come into the care of the Society and the number who had left such care and the number who had returned to their own homes, there was no mention that a child in care had died. Each spoke either of the "continuing developments in the work of the Child Abuse Committee" or "the current campaign to broaden the community's understanding of the issues in Child Abuse." One such reference was two lines long. The other was six lines long because it reported on a public meeting which had been held and a seminar for staff which was to be held.

There was no evidence to suggest that the Board ever attempted to go beyond or behind any report from Mr. Lovatt.

The manual suggests that it is a good idea for the local director to involve other staff in the preparation and presentation of the reports. It would seem that that suggestion was not followed often, if at all, by the Society. Had it been, the Board might not have remained so unaware of the problems which the staff were experiencing or sensing. Perhaps then the confidence of the Board as to the financial management of the Society might have been reviewed. The Board might have inquired as to why the staff were expressing concern as to heavy workloads while the statistical records of the Society did not support that concern.

Another suggested source of information was the financial reports of a children's aid society. Here, at least in most of the years during which Kim lived, the Board would have derived some satisfaction. The cost of the services provided by the Society to the City of Sarnia and the County of Lambton, calculated on the basis of per capita of population, was among the lowest in Ontario. But in some of those years the Society incurred substantial deficits. There was no evidence to indicate that the Board undertook any particular effort to amend its procedures in the preparation of its budgets so as to avoid incurring any deficit. Preparation of the budget was left primarily to Mr. Lovatt, the President and the Chairman of the Finance Committee, but the budget was submitted to the Board for discussion and approval.

The minutes of the meeting of the Board held on January 6, 1976 are perhaps indicative of the manner in which Mr. Lovatt's reports were presented and received.

Under the heading "Local Director's Report" there is a summary of Mr. Lovatt's report upon the proceedings of a meeting on December 18, 1975 between some of the Ministry's staff and representatives of children's aid societies in Ontario. That summary described the guidelines and restraints to be applied in respect of 1976 budgets. A major restraint was a limit upon expenditures set at 5.5% above 1975 estimated, not actual expenditures. The summary effectively concluded as follows:

> "The Minister stated that no exceptions would be made even in areas of high growth. It was also made clear that the Ministry

> would not necessarily pick up in 1976 any deficits incurred during 1975.
> This means that our agency's 1976 budget should be less than our 1975 actual, 5.5% of $567,067 equals $598,256. The advance estimated budget presented in November was for $716,160. In order to stay within the 5.5% a cut of $117,904 is necessary. This would require a reduction of 1/3rd children in care or a similar cut in staff. The other alternative is to cut the budget as requested knowing full well that we may have a deficit of some $100,000 by the end of 1976."

Upon Mr. Lovatt's motion, duly seconded, his report was adopted.

The minutes contain no reference to any discussion of that report. There is no indication that the methods suggested by Mr. Lovatt as means to stay within the restraint evoked any comment or concern of the Board. That is surprising because his suggestions appear to be severe in relation to one programme of service or to staff complement.

Later in those minutes, under the heading "Finance Committee" there is mention of the dilemma of budget restraints and then the sentence "The proposed budget for 1976 was received item by item." That report was adopted unanimously. There was no indication as to what, if anything, was done to comply with the budget restraints.

There was no testimony to indicate that the Board was aware of the provisions of the Act and the regulations thereunder permitting an appeal from or review of any decision of the Minister whereby approval of any item of a proposed budget was withheld. A *fortiori* there was no evidence that any such application by way of appeal from or for review of any decision of the Minister was ever made or considered.

It is impossible to do other than speculate upon the outcome had any such application been made. As shown by the evidence and particularly its brief to the Ministry in March, 1975, the Board was aware of local conditions which would appear to have justified expenditures increased beyond the limit set by the Province of Ontario. Indeed that brief was instrumental in securing approval for the employment of two additional staff persons in December, 1975. One was Mrs. Lo. But the contents of that brief were not used further by the Board.

Similarly the limits on any increase of expenditure in 1976 over 1975 was to be based on the estimated, as opposed to the actual expenditures in 1975. In 1975 the Society incurred a deficit. Its actual expenditures exceeded its estimated expenditure. The deficit in 1975 was such that, as shown in the extract from the minutes of the meeting of the Board on January 8, 1976 set forth above, Mr. Lovatt calculated that, if the Board adhered to the limit imposed, the budget for 1976 would provide for expenditures less than those actually made in 1975. That would have been an unrealistic and unattainable result.

The Board took no formal proceeding under the Act to present or advocate its position. It did present its dilemma to the Members of the Legislative Assembly representing the constituencies containing the City of Sarnia and the County of Lambton. Those representations were futile and were peremptorily and perfunctorily dismissed by the Minister of Community and Social Services when they were transmitted to him.

A child welfare review committee appointed under the Act may have taken a view different from that of the Minister's. But the Board did not seek the review. No testimony indicated any reason for not seeking the review. In my opinion it would have been appropriate for the Board to have proceeded formally and publicly under the Act to object to the Minister's refusal to provide the funds sought by the Society.

I voice this criticism of the Board with the full knowledge that the testimony upon the Inquiry does not establish a direct connection between any financial or budgetary problem within the Society and the way in which Kim's case was managed by the Society. Notwithstanding the absence of any direct connection between the two matters, I am of the opinion that there was in the Society during

Kim's lifetime a pervasive concern with financial matters and a tendency, if not an outright philosophy, to look at reduction of numbers of children in the care and custody of the Society as one possible means of alleviating financial pressures.

I am reinforced in this view by the final version of the report of the committee of which Mrs. Farina was chairman. A portion of that report when discussing Kim's return to her parents' home is as follows:

> "Although both the family service file and the child care file indicate that the decision to return was made at this conference, the verbal statements made to us indicate that the basic philosophy of the family service department was to return children to their homes, and that this philosophy would usually overrule individual opinions."

Without the conscious knowledge or intention of anyone Kim may have been a victim of that situation.

That tendency or philosophy was not produced entirely in the City of Sarnia and County of Lambton. It was rooted in or nurtured by the Ministry.

My opinion as to the existence of that tendency is based on a number of matters mentioned or documents produced upon the Inquiry.

On December 16, 1975 the Director of the Children's Services Bureau, who was the Director of Children's Welfare, wrote to the presidents and local directors of children's aid societies in Ontario. He advised them of the fiscal restraints imposed by the Government of the Province of Ontario which would limit child welfare expenditure in 1976 by restricting any increase therein in 1976 to an amount equal to 5.5% of the 1975 approved budgets. He wrote that he was well aware that children's aid societies would have difficulty in planning to meet that limitation. He set out a number of tentative guidelines for consideration and discussion.

Among those tentative guidelines were the following:

> "(7) Restriction on outside consulting fees only to those consulting expenses related to direct service.
>
> (8) Program Review
>
> (a) Review admissions criteria for screening purposes to control program growth, e.g. selective use of non-ward agreements.
>
> (b) Review all children in care and have screening for placements in special facilities.
>
> (c) More planning leading to independence at age of majority of Crownwards.
>
> (d) . . .
>
> (e) . . .
>
> (f) Increase base caseload assignment per worker.
>
> (g) Review caseloads to screen out inactive cases."

On January 13, 1976 the Director of Child Welfare wrote to the chairmen of the boards of directors of children's aid societies in Ontario. Again he stated the restraint by the Government of the Province of Ontario and wrote:

> "We realize that program costs must also be controlled and we suggest that the following approaches might be helpful:
>
> (a) Review open caseloads with a view to creating capacity for new cases by closing those cases where assistance is least required or,
>
> (b) Achieving a net reduction in open cases where possible.
>
> (c) Review the utilization of child care resources to determine if more economical alternatives are available.
>
> (d) Increasing caseload assignments to staff where appropriate.
>
> (e) Redefining responsibilities of middle management and supervisory staff where appropriate."

The meeting of the Board which should have been held in December, 1975 was convened on January 6, 1976. While the letter of December 16, 1975 from the Director of Child Welfare was not specifically mentioned in the minutes of that meeting, Mr. Lovatt reported on a meeting held on December 18, 1975. I have already set forth a portion of the minutes relating to that report. I enlarge upon that now for my present purposes.

With reference to Mr. Lovatt's report the minutes read in part that he had reported as follows:

> "the following Budget Guidelines for 1976 were given:-
> (1) C.A.S. Budgets will be limited to a 5.5% increase over 1975 Estimates not Actuals
> (2) . . .
> (3) . . .
> C.A.S. are being asked to:-
> (1) . . .
> (2) . . .
> (3) . . .
> (5) . . .
> (6) Reduce staff complement to what was on October 13 1975.
> (7) Trim services by cutting back on admission of children into care, terminating wardships at 18 years of age, holding all child care rates to a 5% increase, not using professional services of lawyers, consultants, etc.
> The Minister stated that no exceptions would be made even in areas of high growth. It was also made clear that the Ministry would not necessarily pick up in 1976 any deficits incurred during 1975.
> This means that our agency's 1976 budget should be less than our 1975 actual, 5.5% of $567,067 equals $598,256. The advance estimated budget presented in November was for $716,160. In order to stay within the 5.5% a cut of $117,904 is necessary. This would require a reduction of 1/3rd children in care or a similar cut in staff. The other alternative is to cut the budget as requested knowing full well that we may

> have a deficit of some $100,000 by the end of 1976."

There is nothing in the minutes to indicate that there was any discussion of the report or that any action was taken to resolve the problem of financial constraint presented by Mr. Lovatt. The Board simply did nothing to meet what must have loomed as a crisis.

I should not let this criticism of the Board stand in isolation. The final item recorded in the minutes of January 6, 1976 is as follows:

> "Mrs. Harvey advised that, due to restraints, the agency was not allowed to hire a lawyer and since they had been involved in some cases of child abuse they felt the need of legal assistance.
> Mrs. Harvey has had some conversations with Mr. Ray Wyrzykowski, Director of Legal Aid, re. applying for Legal Aid for Society Wards and Non-Wards involved in such cases. Mr. Wyrzykowski is looking into this possibility at present. Mr. Shafley moved that $2,500.00 be set aside in case of serious need for the Director in his judgment, to seek legal assistance. Mrs. Berkoff seconded. Carried."

The reference in that motion to "the Director" was clearly a reference to the Local Director, Mr. Lovatt.

Notwithstanding the reference to consultants' fees in the letter from the Director of Child Welfare, the Board responded positively and promptly to the need for legal services expressed by Mrs. Harvey at that meeting. While it is not so stated in the minutes, the testimony upon the Inquiry was that the Board responded by drawing upon funds under its control and not subject to any constraint imposed by the Ministry or Government.

There was no testimony to indicate that at any time during Kim's lifetime any portion of the monies made available by the Board was spent in payment for legal services. Certainly none was spent in relation to Kim's case.

There was no testimony to indicate that the Board considered the matter of legal services at any time during Kim's lifetime other than on January 6, 1976.

Mr. Higgins did testify that during his period of service upon the Board, the Board had appointed a solicitor and he had had some input into the basic decision to appoint a solicitor. Mr. Higgins did not disagree with a statement of counsel cross-examining him that during Kim's lifetime he attended only one meeting of the Board. That meeting was held in April, 1976 about one month after his election as a member of the Board. The next meeting he attended was in September, 1976 after Kim's death. I am satisfied that the Board did not appoint or consider the appointment of a solicitor during Kim's lifetime.

To its credit, when the Board became aware of the involvement of the Society in Kim's life and death, it moved quickly and decisively in response to the publicly stated negative criticism of the Society's handling of Kim's case.

Mr. Allen, as President, convened a special meeting of the Board which was held on December 15, 1977 at 7:30 p.m. That meeting was well attended. Sixteen directors were present. Six, including Mr. Higgins, had indicated they would not be able to attend. At least twelve members of the Society's staff, in addition to Mr. Lovatt, were present.

From the minutes of that meeting which were produced upon the Inquiry, I am satisfied that Mr. Lovatt presented a written summary of the Society's management of Kim's case and that he elaborated upon it orally.

As I read the minutes of that meeting, I am not satisfied that the report, written and oral, was complete. It certainly was not entirely accurate. I make those statements on the basis of the evidence presented upon the Inquiry. Elsewhere in this Report, particularly in the chapters relating to the roles of Mrs. Harvey and Mr. Lovatt, I will discuss what I regard as inaccuracies in and omissions from Mr. Lovatt's presentation to the Board.

The entire meeting was devoted to Mr. Lovatt's report, his recommendations arising therefrom and general discussion related thereto, including responses by Mrs. Harvey and Mr. Lovatt to questions raised by members of the Board and of the staff.

Upon Mr. Allen's suggestion the Board unanimously passed a motion calling upon the Executive Committee of the Ontario Association of Children's Aid Societies to appoint a committee of three to review Kim's case and to make recommendations as to the future operation of the Society.

That committee was appointed in due course. For the purposes of this Report I have chosen to call it the "Farina Committee" because Mrs. Farina was selected as its chairman.

I am satisfied that prior to that meeting individual members of the Board, particularly Mr. Allen as President, expended considerable time and effort to ensure the presentation of Mr. Lovatt's report and the subsequent discussion and resolution. Mr. Allen had a preliminary discussion with the Executive Director of the Ontario Association of Children's Aid Societies to obtain his general advice upon the problem and agreement to respond favourably to a request to form a committee to review the case and the Society.

In my view, Mr. Lovatt's report to the Board as summarized in the minutes of the meeting did not indicate to the Board that Kim's case had been managed by the Society other than in a satisfactory manner in keeping with appropriate and usual procedures. It gave the impression that no valid criticism of the Society could be made as a result of its management of Kim's case.

Notwithstanding the errors and omissions which created the impression that the Society was blameless, the Board was not content. It determined to proceed with Mr. Allen's suggestion for a full, critical and impartial assessment of the conduct of the Society and its personnel in relation to Kim. It wanted to learn what the Society's personnel had done or had not done and what they should have done or should not have done, as the case may be in relation to Kim's case. It wanted a quick but general assessment of the practices and procedures of the Society.

The Board, particularly those members who attended that meeting, are to be commended for the dispatch with which the meeting was convened and the independent review of Kim's case was begun and completed.

I am satisfied that the Board directed all of its employees to co-operate fully with the Farina Committee and to make all files and records relating to Kim's case available for its inspection.

I am satisfied that all members of the Board who attended that meeting wanted the review or examination of Kim's case to be thorough and untrammelled. There is nothing to suggest that any member who did not attend felt otherwise.

I am satisfied that the Board wanted not only a historical or technical review of Kim's case, but it wanted also an assessment of the quality of the services provided by the Society in Kim's case, including an assessment of the quality of the decisions made from time to time in Kim's case. They wanted that assessment to be made by persons highly skilled and qualified in the area of services to children provided by organizations such as the Society.

I am satisfied that the Farina Committee was able to make the appropriate examination and report.

Late in January, 1978 the Farina Committee gave to Mr. Allen an oral summary of its review and examination of the case.

That was the first indication Mr. Allen had that all was not quite well in the Society and that the situation would justify negative criticism. Until then he was reasonably confident that the Society would not come in for very extensive negative comment. There was no testimony to indicate that any other member of the Board felt otherwise prior to February 28, 1978.

A copy of the report originally prepared by the Farina Committee was given to Mr. Allen in Toronto on February 15, 1978. At the request of Mrs. Farina, Mr. Allen returned that copy to her and the report in that form was not presented to the Board.

However, on February 28, 1978 the members of the Farina Committee, together with two members of the Ministry's staff, met with the Board. Fifteen members of the Board attended. The Ministry personnel were the Director appointed under the Act and the Ministry's solicitor. The Farina Committee presented its written report and it was discussed by the Board in committee of the whole. Mr. Lovatt was present and took part in the discussion.

The report of the Farina Committee as presented to the Board differed in form and content from that given to Mr. Allen on February 15, 1976. Those differences are discussed elsewhere in the Report, particularly in those chapters dealing with the roles of the Farina Committee and of the Ministry.

The Board was shocked by the contents of the Farina Committee's report and by the discussion which followed its presentation to the Board. While members of the Board had had some concerns in the past generally in relation to the operation of the Society and the performance of services by its staff, none of them had entertained any thought that the affairs of the Society were in the state disclosed by the Farina Committee's examination and report or that the Society's handling of Kim's case would be so criticized.

At the conclusion of the Board meeting of February 28, 1978, several members of the Board continued a discussion with the members of the Farina Committee and the Ministry personnel.

That discussion was quite informal. Mrs. Farina was asked about it and replied:

> "A. Yes. It was on the night that the Board had received and heard the Report and following that we went to Mr. McPhedran's home, it was well after twelve o'clock, it was quite late. There was Mr. Rutherford,

> Mr. Macdonald, Mr. Petersen, Mr. Heath and myself and I would think about five Board Members, and I did hear Mr. McPhedran make the comment that 'we have been wanting something like this for some time' or 'this is what we've been wanting,' words to that effect. My interpretation of that was that they had realized the Society was not being well run and that they had needed some kind of evidence in order to take action and that this report, in fact, was that evidence, it gave them a lever."

Mr. McPhedran had completed his testimony and had not been asked any questions about any such comment. His testimony does contain a number of comments which would tend to support Mrs. Farina's interpretation of that comment. However a review of his testimony leads me to believe that such comment heard by Mrs. Farina was hyperbole.

The comments by Mr. McPhedran in his testimony to which I have just referred and the questions to which they form answers were as follows:

> "Q. Mr. McPhedran, did you, either on a hearsay basis, or any basis, form an impression at that time [December 15, 1977] or subsequently that there was some internal disorder within the Children's Aid Society?
>
> A. Well, I think there were various rumours brought to the attention of the Board from time to time on various, what might be described as internal matters in the operation of the Society, but really I felt there wasn't any hard evidence that one could attach to any of the rumours that did come forth."

That answer seems most closely to support Mrs. Farina's interpretation of what she heard on February 28, 1978.

Then, much later:

> "Q. But at what point did it become apparent to you that there were some

questions about the way in which this Society was operating?

A. Really, it was rather like a thunderbolt to me. Once Judge Meehan had made it a public issue in his chambers to the press and there had been a meeting I believe in December where Mabel Harvey and Bill Lovatt brought forward to the board their complete report on the Popen case to that point in time. I think up until that point I really wasn't, you know, fully aware that there could possibly be a problem given on that particular case and once the Farina Report had come down and it had recommended a Judicial Inquiry, then I think I felt it was quite necessary that given the observations that they had made, that you know, really we needed some assistance in operating the Society. I think subsequent to that the report that was written by Harry Zwerver made it quite clear to me that the Agency did need some assistance in ironing out some of the administrative problems and social welfare practice."

And shortly after:

"Q. Now you mentioned in response to Mr. Murray's questions that there was various rumours concerning problems which were brought to the Board's attention?

A. Well, over a period of time there had been, but I always felt that when these were discussed with the local director, we tended to get what I thought were totally satisfactory answers and there weren't any problems as a result of that, as far as I was concerned.

Q. Now, what nature were the rumours?

A. Well, they concerned various parts of the Society that had, in an operational sense, been going on. I believe there was something related to a camp that was held by the Society, there was also a problem of a group home which has some group home parents that apparently were unsatisfactory and to my thinking at the time, these problems seemed to be resolved satisfactorily by the local management of the Society and that's really, although I could think about it afterwards.

Q. So you inquired and there didn't seem any cause for concern?

A. That's right. The information was brought to the Board and I really wasn't involved in that process at all...."

And still later:

"Q. And when you saw the report were you somewhat upset at the service being operated, the service being offered by the Lambton County Children's Aid Society?

A. It was for my own self, rather an enormous bombshell, I must say.

Q. Would that be the reaction of most of the people on the Board of Directors of the Children's Aid Society of the County of Lambton?

A. I would think it would be fair to say, but I would qualify that by saying I have really no knowledge of their own particular backgrounds in knowing about operative social legislation.

Q. I just want to know if they were upset?

A. They certainly were upset I would say, by and large no the question about that."

It is those latter responses that satisfy me that until mid-December, 1977 Mr. McPhedran and other members of the Board were unaware of the problems within the Society. Until then, as is reasonably to be expected, they had confidence in the report they received from Mr. Lovatt or other employees. Until then all of those reports had satisfied them that any rumour or suggestion of shortcoming within the Society was unfounded.

By December 15, 1977 their confidence was shaken and they acted appropriately. With the presentation of the report of the Farina Committee on February 28, 1978 the Board did receive what it wanted. It was a full, critical and impartial assessment of the conduct of the Society and its personnel in relation to Kim together with general comment on the state of affairs within the Society. It was prepared by qualified persons. Its authors recognized the limits which were to be placed on it by reason of the short period of time which was allowed for its presentation.

To persons such as Mr. McPhedran the period from December 15, 1977 to February 28, 1978 may have seemed a long time. Hence perhaps the reference to "some time" in one of Mrs. Farina's versions of what she heard.

A considerable portion of the Farina Committee's report deals specifically with Kim's case and the areas of concern found by the Farina Committee in the way that case was managed by the Society. I do not think the Board or any of its members might reasonably have been expected to have been aware of the details of the management of any case unless it were brought to the Board's attention in some way. Until December, 1977 Kim's case was not known to the Board.

However the Farina Committee's report expressed some quite broad concerns which that Committee had as a result of its examination and review of Kim's case.

One of those concerns was the apparent lack of involvement of the Society with other agencies and services in the community. I have commented upon that as I have reviewed various events in Kim's life. It would seem to me that the Board, representative of the community as it wanted to be and I think as it was, might reasonably have been expected to be aware of a lack of liaison between the Society and other social agencies.

A second concern expressed by the Farina Committee related to the qualifications of the staff of the Society and arrangements for in-service training and continuing education of staff. All of those were matters which in my view should have been known, at least in general terms, to the Board.

From the testimony upon the Inquiry, I am satisfied that the Board was aware that it lacked knowledge as to how well the staff of the Society performed their various duties. A corollary to that is that the Board knew it lacked knowledge as to the qualifications of the staff.

Notwithstanding its awareness in this area the Board did not seek any assistance from the Ministry or the Ontario Association of Children's Aid Societies or elsewhere in an effort to obtain some assessment of the qualifications of the staff and the services provided. The Board did not act positively upon Mrs. Wood's suggestion for a review of the Society's operations in general. The Board apparently were swayed at that time by Mr. Lovatt's assertion that the Society could not afford it.

I would think that those members of the Board who attended that meeting on February 28, 1978 and who had been present when Mrs. Wood made her suggestion in 1975 or 1976 must have regretted the failure of the Board to act upon that suggestion when she made it. In saying that I do not mean that the particular organization mentioned by Mrs. Wood should have been consulted, but certainly the Board should have made a specific request to the Ministry or to the Ontario Association of Children's Aid Society to assist the Board by making the appropriate inspection of the operations of the Society and then giving appropriate advice to the Board.

There was no testimony to indicate that the Board had any knowledge of or required or encouraged any programmes of in-service training or continuing education for the staff. I think the Board might reasonably have been expected to be aware of and to require and encourage such programmes.

The Board does not stand alone in this area of criticism. Mr. Lovatt and the Ministry share responsibility with the Board for the absence of such programmes.

The Farina Committee commented upon other personnel problems. These included tensions between professional and clerical staff, lack of leadership and direction by Mr. Lovatt, low staff morale, a poor relationship between the Board and the staff and an absence of channels of communication within the Society.

From the testimony upon the Inquiry I am satisfied that the Board was aware of some of these matters. In my opinion the Board should have been aware of all of them. The fault for this absence of awareness rests on the Board and Mr. Lovatt. Even those of which the Board was aware were not resolved. It would seem that the Board did not fully appreciate the depth or gravity of the personnel problems and the effects that could flow therefrom.

The Farina Committee commented upon the dearth of clear procedural directives and written guidelines within the Society. In the same vein it commented upon practices in the Family Services Department and upon the security of records. There was no testimony to suggest that the Board was aware of any problems in this connection. In my opinion they should have been. That it was not is the responsibility of the Board and Mr. Lovatt.

From February 28, 1978 onward the Board took prompt and effective steps to deal with areas of concern voiced by the Farina Committee. The Board received considerable assistance from the Ministry in those efforts.

On March 7, 1978 the Ministry appointed Mr. Harry Zwerver to be a Special Field Consultant to the Ministry and to be responsible for the operation of the Society. That appointment was made as a result of a request by the Board to the Ministry for assistance.

Mr. Zwerver's assignment was to assume responsibility for the overall administration of the Society and to assess its operations. Mr. Lovatt continued to be the Local Director of the Society.

Mr. Zwerver gave an oral interim report to the Executive Committee of the Board. At the request of that committee he reduced that report to written form under date of April 11, 1978.

In that report Mr. Zwerver, like the Farina Committee, noted a lack of knowledge of the provisions of the Act and, perhaps consequently, a number of failures by the staff of the Society to comply with those provisions. He also commented upon technical and administrative methods. Apart from my view as to the Board's obligation to ensure the provision of ongoing training and continuing education, the Board would not reasonably be expected to be involved with the technical and administrative details.

Like the Farina Committee, Mr. Zwerver noted an absence of appropriate policies and procedures for the provision of services by the Society. As I have indicated earlier it is my view that, subject only to any limitation resulting from the failure of the Ministry and of the staff of the Society, specifically, Mr. Lovatt, to fulfill their obligations, the Board bears responsibility for that absence.

Like the Farina Committee in its report, Mr. Zwerver in his testimony commented upon the relationship between the Society and other community organizations and services. He testified that he attended a meeting of the Child Abuse Committee held at Sarnia General Hospital. He observed that the roles of its own various departments and other services in the community, including police, were carefully set forth in the draft statement presented by the hospital as to its practices and procedures in reporting and handling child abuse cases. He said he was disturbed to note that the role of the Society was not "spelled out." He raised his concern with the Child Abuse Committee. He noted hesitation before others on that committee responded.

After that hesitation several persons at the meeting did speak. They said that the role of the Society was not set forth because it was felt that the Society could not be trusted to carry out its responsibilities. He was told that therefore the hospital chose to use intermediaries to ensure due performance of its duties and then to advise the Society of what had been done. He said the latter comment was made "by one of the medical people there and was also made by the representative of the Police Department."

He said persons at the meeting expressed anger or frustration about what the Society had done or failed to do about matters which they had referred to the Society as cases of actual or alleged child abuse. This particularly was in cases where the Society declined or were reluctant to become involved.

Mr. Zwerver while testifying was unable to recall the particulars of most of the examples cited at the meeting. He did recall one incident mentioned. He had investigated it and had found the criticism of the Society to have been valid.

It would seem to me that the Board, at least through its own members and their associations in the community, if not through Mr. Lovatt and other members of the staff, should have been aware of that failure of the Society to merit or have the respect and confidence of others providing social services to the community.

The Board must bear some responsibility for its lack of awareness of the true position of the Society in the community and in its relationship with the organizations or agencies with which the Society should have had close and good working co-operation.

Mr. Zwerver's report contained comment upon the function of the Board and some recommendations in relation thereto. He recommended the establishment of "a functioning Executive Committee" and "an active Services Committee." The words "functioning" and "active" are key words in that recommendation.

In his testimony upon the Inquiry, Mr. Zwerver said that various committees of the Society appeared to exist on paper, but he found them to be functioning poorly if at all. He said that he felt the failure of the Executive Committee to prepare for Board meetings, particularly in relation to major policy and service issues, led to unduly long and poorly organized Board meetings. He said that the Services Committee had failed to meet regularly and to keep the Board informed of service demands and complexities.

Mr. Zwerver testified that, while he was in Sarnia, the Services Committee of the Board began preparation of manuals of policies and procedures.

Some sense of the utter inadequacy of the written policies theretofore available in the Society is gained by looking at three documents. Two were produced to the Farina Committee when they asked for the policy and procedure manual of the Society. One of those two is entitled "Policies for Child Care Services" and is two pages long with four lines on a third page. The second of those two is entitled "Policies in Regard to Family Services" and is two pages long with nine lines on a third page. Each makes fleeting reference to children in need of protection. Neither contains the words "child abuse." Neither refers to child abuse as a distinct phenomenon meriting any special skills or care.

By comparison or contrast the third document, entitled "Guidelines for Practice and Procedure in Handling Cases of Child Abuse," was published by the Ontario Association of Children's Aid Societies in July, 1976. It is composed of sixty-nine pages of text with an additional fourteen pages of bibliography and audio-visual resources.

I am satisfied that upon receipt of Mr. Zwerver's report and various recommendations the Board responded adequately and set about correcting the deficiencies which he drew to their attention.

The Board co-operated fully upon the Inquiry. Perhaps because of some of the problems mentioned by the Farina Committee as existing in and prior to early 1978 some material which might have been of assistance to me could not be located in the offices of the Society.

While it was representative of the community and was comprised, at least to some degree, of men and women wishing to perform a valuable service to their community and to perform it well, the Board did not fulfill its obligations and the hopes of its members.

The responsibility for that failure lies on the Board and its members, on Mr. Lovatt and on the Ministry. In this chapter, I am concerned only with the Board's responsibility. The responsibilities of the Ministry and Mr. Lovatt are discussed elsewhere.

I am satisfied that some members of the Board were not as much concerned with the affairs of the Society as they should have been. They were not aware of the implications of membership upon the Board. They were not interested enough to pick up from the Board's meeting room material which might have been of use to them in the performance of their duties. They did not regularly attend the Board's meetings.

I am equally satisfied that some, including Mrs. Wood and Messrs. Allen, McPhedran and Wryzykowski, were deeply concerned and involved in the affairs of the Society. They were good citizens who took membership on the Board as a serious and important responsibility. It may be that those were too few.

Even those latter members of the Board were not fully aware of the true state of affairs in the Society. Quite reasonably they and the Board as a whole relied upon Mr. Lovatt as a source of information and advice. Similarly they relied upon the Ministry as an additional source.

I have commented that December 15, 1977 was the date from which the Board began to realize or recognize that all might not be well in the Society. Nonetheless I am satisfied that they must at least have sensed that there were problems in the Society and that someone, the Ministry or Mr. Lovatt, was not keeping them fully apprised.

During Kim's lifetime, the Ministry made no reports of any sort to the Board. The Board must have known that the Ministry, as represented by the Director of Child Welfare, was not fulfilling its statutory obligation to advise and supervise the Society and to inspect its operations and records. But the Board did not approach the Ministry to ask for any such supervision or inspection. The Board did not approach the Ministry for advice or assistance even when, in 1975 or 1976 upon discussion of Mrs. Wood's suggestion, it recognized its own inability to do something which it felt was required.

It would be more difficult for the Board to detect the insufficiency of or any inaccuracy in the information and advice furnished to the Board by Mr. Lovatt. But the Board was aware of some problems and apparently felt no need to go beyond Mr. Lovatt to seek their resolution.

The Board did take some steps to seek to correct some of the problems of which it was aware, but did not ensure that those steps were effective and ongoing.

Mr. Zwerver testified that over a period of years before coming to Sarnia in 1978 he had heard various comments of a general nature that all was not well in the Society. He said he heard such comments at various meetings of committees and professional persons. It is surprising that the Board would not be aware of that sort of comment and the general reputation of the Society.

If the Board was unaware of the true state of affairs because of a lack of knowledge of its role and its duties, obligations and powers that lack of knowledge of its role is, in part, its own fault.

There was some testimony as to an orientation meeting for new members of the Board, but, especially on Mr. Higgins' testimony, that was not an effective means to instruct new members as to their responsibilities. There was no evidence of any ongoing programme to keep members of the Board informed generally as to their duties and obligations. I am satisfied that, like Mr. Allen, they learned by depending on one another, particularly depending on those who had been members of the Board for longer periods of time. That is not a satisfactory means of learning. They would continue the mistakes of the past. With all respect for the members of the Board it could very easily have been, and in some ways surely was, a case of the uninformed informing the reinformed.

In my view, each member of the Board should have received, initially, at least three items, the Manual, the statute and the regulations, and then should have received amendments or revisions as necessary. The Board failed itself, its staff and the community generally by not ensuring that each member of the Board had those materials.

Mere possession of the material is not enough. The Board should have ensured that in some way every member of the Board received some instruction or education in relation to the performance of service as a member of the Board. In not ensuring the provision of that instruction the Board again failed itself, its staff and the community.

In various areas the Board failed adequately to fulfill its duties and responsibilities. Thus it failed Kim.

Chapter XVIII

The Role of Personnel of the Society

In preceding Chapters in the Report I have examined in some detail and expressed comment upon the roles of various elements and senior officers of the Society. They are primarily Chapters XIV to XVII, inclusive.

In other Chapters, particularly those describing events during Kim's life and at about the time of her death, I have mentioned other persons associated with the Society. For the most part those persons were employees of the Society.

I want now to review and comment upon the performance by those people of their various roles in Kim's life. It is convenient for me to deal with them in the order in which they first became aware of or involved in Kim's case.

Thus I shall deal firstly with Mrs. Audrey Lillian Dick, a case worker with the Society.

Mrs. Dick was the first employee of the Society to became aware of Kim. That was on June 17, 1975 when Police Constable Gander saw her at the Society's office and advised her of the telephone call to the Sarnia Police Force to the effect that Kim had been or might have been abused.

Mrs. Dick's involvement at that time was minimal. She promptly and properly fulfilled the immediate requirements of the case by assigning Mrs. Sandra Lynn Saul, a case worker, and Mrs. Winona Hoad, a volunteer with the Society, to accompany Police Constable Gander to investigate.

Upon all of the evidence I am satisfied that that was an appropriate response to Police Constable Gander's report. It was appropriate both in its nature and in its promptness. No one expressed any criticism of Mrs. Dick to that point.

When Mrs. Saul and Mrs. Hoad returned to the Society's offices after seeing Kim, Annals Popen and Jennifer Popen, Mrs. Saul spoke briefly with Mrs. Dick to advise her of the nature of the visit and its results and the report she was making to Mrs. Harvey, who was the immediate superior of both Mrs. Dick and Mrs. Saul. Mrs. Saul advised Mrs. Dick of her great concern about the case.

On June 17, 1975 Mrs. Dick wrote, in longhand, some notes which, much later, were transcribed in typewritten form and became part of the recordings of the Family Services Department of the Society in relation to Kim's case.

Unfortunately Mrs. Dick, like Mrs. Saul and Mrs. Harvey, was unable to explain satisfactorily where her handwritten notes were from June 17, 1975 until sometime after August 31, 1975 when they were located somewhere and transcribed.

In my view Mrs. Dick deserves some very mild criticism for her failure to ensure that her notes were transcribed into the permanent records of Kim's file.

However, in all of the uncertainty of what happened to her notes, she was a victim of the poor organization and administration of the Society. She assumed that her notes would be given to Mr. Harold Carter, the worker who Mrs. Harvey said was likely to be assigned to the case. She had spoken to Mrs. Harvey so that she could note in the log of the short service team of workers that she and that team of workers would not be dealing with the case.

I am satisfied that Mrs. Harvey made it clear that she was assuming personal responsibility for all other procedures that would be involved in opening the case and assigning it to Mr. Carter. Mrs. Dick then had no direct responsibility to do anything more about it.

But, on the testimony, I am satisfied that good practice by Mrs. Dick at that time would have included assurance that the information she received that day was properly recorded in the files of the Society for the assistance and information of Mr. Carter and any other worker who might at any later time be involved in the case.

I am equally satisfied that such an expectation of Mrs. Dick was far above the level or standard of practice of social work then prevailing in the Society.

I am satisfied that Mrs. Dick bears no responsibility for the failure of the Society to open a file for Kim's case in June, 1975 and to take appropriate action to investigate and deal with the case at that time.

Mrs. Dick's only other active involvement with Kim's case was on August 31, 1975 when she was summoned to St. Joseph's Hospital. She responded promptly to the call for assistance.

On the evidence I am satisfied that Mrs. Dick's actions at that time were appropriate and effective. Kim came into the care of the Society and remained in a place of safety.

There was some suggestion that Mrs. Dick's use of what was called a non-ward agreement was inappropriate. It was suggested that she might more properly have moved to apprehend Kim under the provisions of The Child Welfare Act.

That suggestion was not strongly urged. I am not prepared to express any criticism of Mrs. Dick's use of a non-ward agreement. I am satisfied that Annals Popen and Jennifer Popen were willing parties to that agreement and there was nothing in the way of duress or pressure upon them. Mrs. Dick had explained the agreement fully to Annals Popen and Jennifer Popen.

Mrs. Dick's notes of her actions and observations on August 31, 1975 were duly and appropriately transcribed into the recordings for Kim's file.

Mrs. Dick's only other contact with Kim's case was as a witness upon the hearing of the

Society's application for wardship of Kim on February 25, 1975.

Mrs. Saul and Mrs. Hoad were the next persons associated with the Society to have contact with Kim's case. Their only involvement was on June 17, 1975.

Mrs. Hoad, as a volunteer, in a sense merely accompanied Mrs. Saul and she had no direct responsibility to do more. She assisted Mrs. Saul in the examination of Kim for external signs of injury or abuse. In my opinion Mrs. Hoad adequately did all that was or might have been expected of her.

Mrs. Saul's response to the assignment of the case to her by Mrs. Dick was prompt and provided a good basis for performance of the investigation and management of the case which should have been undertaken immediately by the Society. Subject only to some slight reservation I will express, Mrs. Saul bears no responsibility for the failure of others to conduct such investigation and management.

On all of the testimony I am satisfied that Mrs. Saul performed her assigned duties quite well. With Police Constable Gander and Mrs. Hoad she located Kim. She spoke with Mrs. Fay Popen. She examined Kim. She spoke with Annals Popen and Jennifer Popen. She reported promptly, both orally and in writing, to Mrs. Harvey, her immediate supervisor. Her report, particularly the oral portion, contained a quite adequate and detailed review of her actions and observations on June 17, 1975 together with an expression of some comments indicating her assessment of the situation based on her limited contact and opportunity to observe.

Her report to Mrs. Harvey showed that she viewed the case with a great deal of concern. She thought it was serious and would require involvement of the Society for an extended period of time. She had made and reported some observations to support her concern and opinion.

Dr. Turner expressed the view that Mrs. Saul should have expressed her assessment or evaluation of the case somewhat more thoroughly than she did in the written record she prepared. However, even in expressing that view, Dr. Turner acknowledged that, by its very nature and her suggestion that close supervision be provided, Mrs. Saul's report showed that she viewed the case as being serious.

In her testimony upon the Inquiry Mrs. Saul expanded upon the written record she had prepared to say that she had, in her oral report, recommended to Mrs. Harvey that the case was such that it should be immediately transferred to a long term worker. Clearly Mrs. Saul's assessment was that the case would require the involvement of the Society for a long period of time as well as the assistance of others, such as The Lambton Health Unit. In her oral report Mrs. Saul had particularly directed Mrs. Harvey's attention towards Jennifer Popen who, in Mrs. Saul's view, was the dominant spouse in the Popen home.

I am satisfied that, while Mrs. Saul felt she had accomplished much on June 17, 1975, she at the same time recognized that much more remained to be done. It was reasonable for her to assume that Mrs. Harvey, as Supervisor, and Mr. Carter, an experienced case worker, would ensure that everything necessary was done.

In the same manner as Mrs. Dick, Mrs. Saul deserves some very mild criticism for failing to ensure that her notes made on June 17, 1975 were promptly and accurately transcribed into the permanent record of Kim's case. She too was the victim of the Society's deficient organization and administration. She too was entitled to rely on Mrs. Harvey's assumption of responsibility for the continuing or further handling of the case. Mrs. Saul was, on June 17, 1975, entitled to feel that she had completed, to Mrs. Harvey's satisfaction, all that was expected of her.

But good practice, superior to that then prevailing in the Society, would have required her, like Mrs. Dick, to ensure that her notes and report formed a part of the permanent record of Kim's file.

On the testimony I am satisfied that Mrs. Saul thus does bear some responsibility for the failure of others in the Society to pursue the investigation and management of Kim's case on and immediately after June 17, 1975.

That responsibility is slight and perhaps might be described as indirect. On the evidence I am satisfied that good practice in child welfare and in cases of child abuse requires that there be a case conference at various critical points in the management of each case. One such critical point is the time at which one worker assumes from another the responsibility for a case. Preferably at least three persons should attend the case conference at that point. The three are the two workers involved, outgoing and incoming, and their supervisor.

Despite testimony, such as that of Mr. Lovatt, that such case conferences were a part of the usual practices and procedures of the Society, I am not satisfied that they were. Thus, in a sense, Mrs. Saul might be excused from the responsibility I have placed upon her.

However, notwithstanding the lack of adequate practices within the Society, I remain of the view that Mrs. Saul does bear that responsibility. She was a well educated person who had served as a social worker with the Society since August, 1973. She also had had some prior somewhat related work. As a social worker she had a duty to keep herself informed of usual and accepted practices and procedures. Thus she should have been aware of the practice of case conferences surrounding transfers of cases among workers in a children's aid society. She should have sought out Mrs. Harvey or Mr. Carter to ensure that there had been an effective and satisfactory transfer of the case from her to Mr. Carter.

That is the basis of my criticism of Mrs. Saul's performance of her duties.

For all practical purposes she took no further part in Kim's case after June 17, 1975 when Mrs. Harvey assumed direct responsibility for opening the case and assigning it to Mr. Carter. In my opinion, even though relieved of ongoing active participation in Kim's case, Mrs. Saul should have taken it upon herself to approach Mrs. Harvey and Mr. Carter with a view to having such a case conference.

My criticism of Mrs. Saul is diminished by my recognition that the persons who should have been involved in any such conference and the organization of the Society may have made it difficult for Mrs. Saul to make such an approach. She was a relatively junior and new member of the staff of the Society. Mr. Carter was an experienced and long-time employee. Mrs. Harvey was a dominant and assertive supervisor. Mrs. Saul might very well be excused for deciding, if she had even thought about it, against making such an approach. It is understandable that she might feel that such an approach by her might be regarded by Mrs. Harvey and Mr. Carter, or either of them, as being precocity. It is understandable that she might feel that either Mrs. Harvey or Mr. Carter would convene such a conference and that it was not her duty to do so.

Dr. Turner in his testimony recognized some of what I have mentioned. He said he would have expected that a social worker in Mrs. Saul's position after June 17, 1975 might have made some inquiries. He acknowledged that local factors in a society would have a bearing upon it. He did not seem to expect more of Mrs. Saul.

However had she approached Mrs. Harvey and Mr. Carter the Society might have done some or all of the things which should have been, but were not done immediately after June 17, 1975.

This assignment by me of responsibility to Mrs. Saul does not in any way reduce my criticism of Mrs. Harvey's failures to perform her duties between June 17, 1975 and August 31, 1975.

Dr. Turner expressed some criticism of Mrs. Saul's written record of the events of June 17, 1975. He said she had noted that Kim, who had been content when held by Mrs. Fay Popen, became upset when held by Jennifer Popen who tried to feed her. Dr. Turner made that reference when he was commenting upon what he perceived to be the absence of diagnostic or evaluative assessments from the recording in the Society's file on Kim. He said Mrs. Saul's recording was deficient in that regard.

I accept Dr. Turner's assessment as a correct appraisal of Mrs. Saul's recording. Again I temper my expression of criticism of Mrs. Saul by noting that Dr. Turner's testimony related only to the written record. In the situation, as it existed on June 17, 1975, that written record supplemented or was supplemented by Mrs. Saul's oral report to Mrs. Harvey on that day. I am satisfied that Mrs. Saul fully apprised Mrs. Harvey of her concerns for Kim and her belief that the case required long term attention to be begun at once by the Society.

Furthermore, Mrs. Harvey, the Supervisor, asked for no more and accepted the validity of Mrs. Saul's concerns and opinion.

Mrs. Saul had one further opportunity to approach Mr. Carter about Kim's case. Police Constable Gander testified that he had telephoned the Society and spoke with Mrs. Saul on July 2, 1975. He had not heard from anyone at the Society and he wanted to know what the Society was doing. Mrs. Saul merely advised him that she had no further responsibility for Kim's case which had been assigned to Mr. Carter, who had not yet done anything.

It would seem that, had she been so inclined, Mrs. Saul could have mentioned Police Constable Gander's telephone conversation without offending Mr. Carter. If nothing else, it would have alerted Mr. Carter to the possibility that he was responsible for a case which, for some reason, had not yet been transferred to him.

After August 31, 1975 two more members of the Society's staff became directly involved in the management of Kim's case. They were Mrs. Mary Isobel Kirby, a worker in the Children's Services Department, and Mr. Harold Raymond Carter, a worker in the Family Services Department. Through Mrs. Kirby, Kim was placed in the home of Mr. and Mrs. Adrian Cecile.

Mrs. Kirby was responsible for the physical removal of Kim from hospital on September 5, 1975.

I have already expressed, and I repeat, some criticism of the arrangements made for Kim on September 5, 1975. On that date she was placed in one foster home, but on September 10, 1975 she was moved to the home of Mr. and Mrs. Cecile. Mrs. Kirby recorded that that change was made because the first foster home was very near the residence of Kim's parents. It would seem to me that the proximity of the first foster home to the Popen home should have been known and appreciated on September 5, 1975. It would appear to have been error or oversight on the part of Mrs. Kirby and whosoever assisted her in the selection of a foster home for Kim.

That would not appear to have had any bearing upon the development of Kim's case within the Society. Certainly it did not contribute to the tragedy that was to come.

In any event the matter was quickly corrected. I am satisfied that the foster home provided to Kim by Mr. and Mrs. Cecile was an excellent choice.

Mr. and Mrs. Cecile impressed me as two persons who, with their own children, became lovingly and caringly interested in Kim and her welfare. They provided to her a home in which she received love and care without abuse and neglect. Mr. and Mrs. Cecile and their family did this even though Kim was not always, particularly in the earlier months of her living with them, an easy child to live with. They did this at the expense of some strain upon themselves, particularly on Mrs. Cecile.

It would seem that, within the structure of the Society, Mrs. Kirby performed her duties well. She arranged medical examinations and treatment of Kim. She arranged Kim's visits with her parents. She maintained a regular written record of her actions and observations.

As to recordings, Mrs. Kirby's appear to me to be concise and to have been prepared in much shorter segments than those of Mrs. Lo and Mr. Carter. Each day or event seemed to merit a separate entry in Mrs. Kirby's recording.

Dr. Turner did express some criticism of all of the recordings in the files of the Society. He did not except Mrs. Kirby's recording from his observation that recordings in the Society's files lacked a diagnostic and evaluative component. He said they were simple reporting of events without any indication of how she interpreted what she observed and without comment as to what further information she wished she had. He did not regard them as constituting a professional case dossier. They did not reflect the goals set and the degree of achievement of those goals from time to time. They did not identify areas of concern or difficulty in the case, their cause and how they might be overcome. They did not contain an adequate analysis or interpretation of the observations.

I temper my criticism of Mrs. Kirby's recording because, on the evidence as to the predominant position of the Family Services Department in the Society, I am satisfied that that Department assumed the right and the duty to manage Kim's case apart from the details of her day-to-day personal care in the foster home provided by the Society.

Furthermore, there was no testimony to suggest that the Supervisor of the Children's Services Department of the Society or anyone else had advised Mrs. Kirby that her recordings were deficient.

I except from that latter comment the testimony to the effect that Mrs. Kirby had made no entry in that Department's file on Kim's case in respect of anything which happened after Kim's return to her home on May 27, 1976 and that, at some later time, it had been necessary to add some items to that recording.

That failure by Mrs. Kirby to continue the file in the Children's Services Department of the Society was not noted by anyone until long after Kim's death when Mr. Charko, of the Ministry of Community and Social Services, commented upon it. Mrs. Harvey then transposed into the file in the Children's Services Department some material from Mrs. Lo's recordings in the file in the Family Services Department for the period from April 15 to August 11, 1976. Mrs. Kirby was not alone in her belief that the file in the Children Services Department should be closed when Kim was returned to her home.

While Mrs. Kirby's recordings may not have met the standards which might ordinarily be expected of a qualified and experienced social worker, the deficiencies in those recordings did not, in my opinion, have any adverse effect upon the management of Kim's case by the Society generally and by Mrs. Harvey, Mr. Carter and Mrs. Lo particularly.

I am supported in that view by the testimony as to the incident in Mrs. Harvey's office in February, 1976 when Mrs. Kirby joined with others to express strong resistance to any suggestion that Kim be returned to her parents' home. The resistance was cavalierly dismissed by Mrs. Harvey.

I am further supported by the absence of testimony that anyone, other than Mrs. Kirby and her Supervisor in the Children's Services Department, read Mrs. Kirby's recordings during Kim's lifetime. There was a similar lack of testimony of any effort by Mrs. Harvey, Mr. Carter and Mrs. Lo to obtain Mrs. Kirby's opinion on any aspect of Kim's case. The only time her opinion was sought was in late April and early May, 1976 and that was in relation to the selection of a time for the implementation of Mrs. Harvey's earlier decision to return Kim. That earlier decision had effectively limited the scope of any opinions that Mrs. Kirby might express.

Mr. Carter was assigned by Mrs. Harvey as the worker in the Family Services Department of the Society who would have direct responsibility for Kim's case. That assignment, while recorded as having been made on August 31, 1976, was not made until Tuesday, September 2, 1976, at the earliest.

Mr. Carter retained that responsibility until the completion of the hearing of the Society's application for wardship of Kim. That hearing was on February 25, 1976. I am satisfied that Mr. Carter prepared only one lengthy recording in Kim's file and it was expressed by him to cover the period of time from September 1, 1975 to February 29, 1976. That recording was not made until after Mrs. Harvey relieved him of his responsibility for Kim's case.

Mr. Carter was one of the senior and most experienced social workers employed by the Society. Nonetheless he did not perform his duties as well as one might have reasonably expected.

He bears no responsibility for the errors or omissions which resulted in the failure of Mrs. Harvey's intention, announced on June 17, 1975, to assign Kim's case to him. He simply was not aware then of Kim's case and of Mrs. Harvey's intention.

In the same way that Mrs. Saul is to be criticized for not speaking to Mr. Carter after Police Constable Gander's telephone call on July 2, 1975, Mr. Carter is to be criticized. He testified that Mrs. Betty Hewitt, a hospital nurse, had spoken to him about Kim. He believed that was in May or June, 1975. He simply informed Mrs. Hewitt that he was not involved in the case. He said he learned, in some unstated way, that the case was "active within the intake department" of the Society. There was no indication he spoke to anyone in the Society about the case. Had he done so he might have learned that Mrs. Harvey had intended to assign the case to him, but something prevented the completion of the assignment and the case remained unattended and unassigned.

In fairness to Mr. Carter, Mrs. Hewitt denied that she had spoken to him about her observation of Kim with black eyes and bruised face in June, July or August, 1975. She was unable to be more specific as to time. It may be that he was mistaken as to the date of any conversation with Mrs. Hewitt for he certainly did speak with her about Kim's case after August 31, 1975.

In another area of his testimony Mr. Carter said he first learned of Kim's case in August, 1975, when Police Constable Gander mentioned it during a discussion of another matter. He fixed the date of that visit as August 29, 1975 by reference to the entry in the Society's file. I repeat my statement in Chapter VI of the Report that I do not accept that testimony and recording as being accurate.

Even Mr. Carter himself while testifying illustrated that the recordings in the Society's files were not fully reliable. Sometimes they were prepared long after the time to which they related. The typewritten recordings were not always checked by the author of any note used as the basis for the recordings. Items Mr. Carter had prepared for inclusion in the recording were missing; apparently they were not transcribed.

Mr. Carter testified that the recording under date of August 29, 1975 was not entirely accurate and was not in the sequence in which he recalled having dictated it.

I have noted the form of that recording. It is written in the third person. The style is different from that of the longer recording for the period from September 1, 1975 to February 29, 1976. Mr. Carter's initials do not appear in the margin, but do appear in the body of the short text.

The reference in the short text that "no report was received" from the police satisfies me it was written after August 29, 1975.

I have found that the item under date of August 29, 1975 was neither written nor dictated by Mr. Carter.

Mr. Carter's direct responsibility for Kim began on September 2, 1975 when her case was properly assigned to him. At that time Kim was in the hospital and in the care of the Society. The Children's Services Department of the Society was responsible for her day to day care following her discharge from hospital.

Mr. Carter co-operated with members of the Sarnia Police Force in their investigation of the matter. The police officers' main purpose was to determine whether or not whatever had happened to Kim constituted any offence in respect of which a criminal or quasi-criminal charge should be laid. That would be periphereal to Mr. Carter's main purpose.

As the worker in the Family Services Department of the Society, Mr. Carter, subject only to Mrs. Harvey, Supervisor of that Department, and Mr. Lovatt, Local Director of the Society, was, because of the accepted organization of the Society, responsible for the over-all management of Kim's case within the Society other than the portion for which the Children's Services Department was directly responsible.

In that capacity, Mr. Carter was responsible for the conduct of the investigation of the matter on behalf of the Society. The main purpose of that investigation should have been to try to determine what had happened. He should have attempted also to determine who had been involved and what had caused any act to be done.

Only after a complete investigation could the Society have determined whether its services were necessary or desireable to protect Kim or to assist her parents in their role in relation to her.

I am satisfied that Mr. Carter, quickly and correctly and in keeping with good practice, assessed Kim's case as one which should be presented to the Provincial Court (Family Division) of the County of Lambton which, in this Chapter, I shall simply call the "Court." That was so even though Annals Popen and Jennifer Popen had executed the non-ward agreement and other documents placing Kim in the care of the Society and authorizing the Society to obtain information from various sources.

The testimony was not clear to establish when Mr. Carter caused an application to the Court to be prepared and notice thereof to be served upon Annals Popen and Jennifer Popen. The application was initially presented in the Court on September 8, 1975, but the hearing was adjourned to enable both the Society and Kim's parents to prepare for it. The application sought an order of the Court declaring Kim to be a child in need of protection under the terms of The Child Welfare Act and making her a ward of and committing her to the care and custody of the Society.

I am satisfied that it was appropriate and necessary for the Society to seek an adjournment of the hearing of its application from September 8, 1975. In my opinion it would not have been reasonable to expect Mr. Carter to have completed his investigation of the matter by that time. The police investigation had not been completed.

It is to be noted too that Mr. Lovatt appeared in the Court with Mr. Carter on September 8, 1975. Mrs. Harvey acknowledged that she too was likely present. Clearly Mr. Carter had Mr. Lovatt's concurrence. Mr. Lovatt specifically requested an adjournment.

I am satisfied that the adjournment from September 8, 1975 was necessary also to enable the Society to attend to other matters in preparation for the hearing.

The initial adjournment was to October 29, 1975, which would seem to have been more than ample to enable Mr. Carter and the Society as well as Kim's parents to prepare for the hearing and to do whatever was required to be done before the hearing.

In Chapter VI I summarized in some detail the various subsequent appearances in the Court in relation to the Society's application.

On October 29, 1975, Mr. Higgins, acting for Annals Popen and Jennifer Popen, sought and obtained a further adjournment to January 19, 1976. From my reading of the transcript I am satisfied that Mrs. Harvey, appearing on behalf of the Society, did not oppose Mr. Higgins' request for an adjournment even though witnesses had been subpoenaed and would be inconvenienced.

I infer that by October 29, 1975, Mr. Carter had done all that Mrs. Harvey expected or wanted him to do in investigating the matter and preparing for the hearing. I infer that both Mrs. Harvey and Mr. Carter felt that the Society was ready to proceed with the hearing of its application on October 29, 1975.

Mr. Carter did not speak out against Mr. Higgins' request for the adjournment. I do not criticize him for that. In my view he bears no responsibility for the adjournment from October 29, 1975, but that is not to say that I feel he had adequately prepared the application for presentation in the Court on that day.

On January 19, 1976 the matter was adjourned again. This time, in my opinion, Mr. Carter does bear some responsibility in that, in part at least, the adjournment came about because of the absence of Dr. Singh, a witness whose testimony was felt to be important to the success of the Society's application. There was no testimony to indicate that Mr. Carter made any effort on or about October 29, 1975 to ensure that Dr. Singh would be able to attend on January 19, 1976. There was no testimony as to when Mr. Carter, responsible for the preparation of the Society's application, which responsibility included responsibility to ensure the attendance of witnesses, sought to advise Dr. Singh of the adjournment to January 19, 1976. Mr. Higgins was not aware of any problem until January 19, 1976 and resisted Mrs. Harvey's suggestion that the testimony upon the application, save that of Dr. Singh, be heard and the hearing concluded later on Dr. Singh's return.

In my view Mr. Carter does not bear full responsibility for that adjournment. Mrs. Harvey, as his supervisor and as the Society's court worker responsible for the presentation of the application to the Court, bears that responsibility as well.

In my opinion the lengthy adjournment from January 19, 1976 was entirely unnecessary. Either that date should not have been selected without first assuring that Dr. Singh would be available or, as soon as Mr. Carter learned of any conflict in dates, something he should have done long before January 19, 1976, he should have attempted to resolve the conflict. If nothing else, Mr. Higgins should have been informed and, if need be, an application might have been brought to the Court to obtain another appointment before or very soon after January 19, 1976. In my view Mr. Carter was responsible for the failure of the Society in that regard.

From the foregoing it would seem that Mrs. Harvey at least was satisfied that Mr. Carter had done all that was necessary or desireable to enable her to make an adequate presentation of the Society's application to the Court. That satisfaction of his Supervisor may tend to mitigate my criticism of Mr. Carter in this regard.

I do not share Mrs. Harvey's satisfaction as to Mr. Carter's performance of his duties. In my opinion Mr. Carter's investigation and preparation were inadequate. He imposed some restrictions upon himself because of his own self-induced misconception of the effect of the investigation conducted by the

Sarnia Police Force. He accepted other restrictions purportedly imposed upon him by Mr. Higgins.

Mr. Carter testified that he had had "limited involvement" with Kim's parents other than co-operating with Mrs. Kirby to arrange their visits with Kim. He went on to say:

> "...other than that case work practices could not be established because I was advised at that point by Constable Wyville that they would be bringing charges, criminal charges, against Mr. and Mrs. Popen."

He said that he originally understood that the charges against the parents would be under the Criminal Code, but he later learned they were to be under The Child Welfare Act.

That was, to me, a clear acknowledgement that Mr. Carter recognized that he had not adequately fulfilled his responsibilities.

He had earlier said that his duties included preparation of "social histories from the parent[s]."

He went on to say that he had seen Kim's parents only "infrequently" during their visits with Kim. He said that normally he should have been working with Kim's parents, but he did not do so "because the seriousness of the abuse had not been deliberated" and the identity of the perpetrator of the abuse had not been decided. He added "...perhaps I was hesitant or had some personal reservations at that point of view."

Those responses by Mr. Carter were directed particularly to the period from September 2 to October 29, 1975, but the testimony satisfied me that the situation remained relatively unchanged until after the Society's application was heard and determined on February 25, 1976.

In my view the possibility that the police investigation might lead to charges against Kim's parents should not have interfered with Mr. Carter's establishment and maintenance of normal case work practices. In my view even the laying of such charges should not have interfered therewith.

It was Mr. Carter's own decision not to establish those case work practices early in September, 1975. In my view that was a gross error on his part.

There was no testimony that he sought or received any advice on that subject at that stage. Thus it is my opinion that, subject only to the responsibility Mrs. Harvey bears as his Supervisor, he alone was responsible for the failure of the Society to provide adequate service to and management of Kim's case.

Mr. Carter's testimony revealed that he felt there was some association between the adjournments of the hearing of the Society's application and the lack of a conclusion to the charge against Annals Popen and Jennifer Popen laid by the police. It may very well be that that was so in fact, but it is no excuse for Mr. Carter's allowing it to restrict him in performance of his duties. That he permitted that to happen is his own responsibility.

That state of affairs appears to have continued without any outside influence upon Mr. Carter until January 16, 1976, Mr. Carter testified that on January 16, 1976, Mr. Higgins had told him that he, Mr. Carter, was not to speak to Annals Popen and Jennifer Popen. He said that he was still preparing for the hearing scheduled for January 19, 1976 and so needed information from them. Later, prior to the hearing on February 25, 1976, Mr. Higgins consented to Mr. Carter's visiting the Popen home, but imposed the restriction "Don't quiz them."

Mr. Carter testified that he was "legally restricted" by Mr. Higgins' original denial and later limitation of his right to visit and speak with Annals Popen and Jennifer Popen. He said not carry out "any routime or normal case work practices that one would do".

All of that being so, I am satisfied that Mr. Carter had not properly prepared the Society's application for hearing on October 29, 1975, when Mrs. Harvey was apparently ready to present it, or on

January 19, 1976 when Dr. Singh's absence was the reason given for adjournment.

While Mrs. Harvey, as his Supervisor and as the Society's court worker, may share it with him, I think Mr. Carter is responsible for his failure to complete properly the preparation of the Society's application.

That lack of preparation related to the failure to conduct normal case work practices, including interviews with Annals Popen and Jennifer Popen to obtain social histories and current information for the benefit of the Court and the Society and, most importantly, for the benefit of Kim.

None of that was really done even before the hearing was held on February 25, 1976. Mr. Lovatt, in his testimony, acknowledged that the Society knew very little about Jennifer Popen on February 25, 1976 and for some time thereafter. After Kim died the Society learned a lot about Jennifer Popen, much of which was information Mr. Carter could and should have obtained before February 25, 1976.

That he did not was because of his own uncertainty and hesitation and error. He acknowledged uncertainty and hesitation because of the absence of a determination by the Court of the identity of whomsoever had abused Kim. I ascribe error to him. He was in error in believing that the lack of such a judicial determination prevented him from establishing normal or usual case work practices in investigating the matter and preparing the Society's application to the Court. He was in error in believing that Mr. Higgins could "legally restrict" him from carrying out "routine or normal case work practices."

He compounded his original error by failing to seek advice as to the validity of his belief. He compounded his second error by accepting Mrs. Harvey's advice to abide by Mr. Higgins' injunction.

Mr. Carter's errors were of importance. The Society and the Court were deprived of the benefit that would have flowed from completion of normal case work. Mr. Carter in his testimony acknowledged that in a case such as Kim's it was important that the Society and he have full and open access to the family home and full and open discussion with the parents of the child. The Society had neither. Kim was the ultimate victim of those errors.

Mrs. Harvey in her testimony, perhaps unwittingly in efforts to deflect criticism of the Society, acknowledged that performance of normal case work with the Popen family from September 1, 1975 to February 25, 1976 might have averted the tragedy. The period of time she mentioned coincides exactly with Mr. Carter's period of responsibility.

In my view Mr. Carter effectively abdicated all responsibility towards Kim between September 2, 1975 to February 29, 1976. All he did was co-operate with Mrs. Kirby, to arrange visits between Kim and her parents, and make some relatively cursory preparations for the hearing of the Society's application.

From Mr. Carter's references to the absence of judicial determination of the charge against Annals Popen and Jennifer Popen and to the effect of that absence upon his own conduct, I infer he felt that identification of Kim's abuser or abusers was essential to the success of the Society's application. If I am correct in drawing that inference, Mr. Carter was in error. I believe it would be of interest to know the identity of any assailant, but it should not be the sole determinant of the Society's application.

However, feeling that the identity of any assailant was so important, Mr. Carter nonetheless testified that his role was not to investigate Annals Popen and Jennifer Popen, but to establish a rapport with them. In my opinion that is another instance of error by Mr. Carter.

I am satisfied that he did have a duty to investigate. The testimony of well qualified witnesses makes that clear. It is equally clear that the existence of that investigative duty does create difficulty for any social worker who, after completion of any proceedings resulting from an investigation, must continue to work with persons who may have been the subjects of the investigation.

That does not excuse the social worker from performing the investigative role. Thus Mr. Carter is not to be excused from his failure to know the full scope of his responsibility.

Mr. Carter seems to have relied upon the Sarnia Police Force to conduct the necessary investigation. He seemed to feel that the result of the charge against Annals Popen and Jennifer Popen would have some bearing upon the result of the Society's application. It may be that the result of the police investigation would be of interest upon the hearing of the Society's application, but it would be only one of several factors in the result.

On the testimony of well qualified witnesses upon the Inquiry I am satisfied that the Society had a duty to investigate the allegation or belief that Kim had been abused. The Society appointed Mr. Carter to fulfill that duty.

Upon the testimony of those same witnesses I am satisfied that the Society could not delegate that duty although it might co-operate with the police in its performance. Mr. Carter elected to rely upon the police investigation without adequate independent effort by himself. Mr. Carter is not to be excused from his failure to conduct a complete investigation on behalf of the Society.

The transcript of the proceedings upon the hearing of the Society's application provides one means of measuring the extent and efficacy of Mr. Carter's investigation and his preparation of the Society's application. The deficiencies are rather startling, particularly since they probably contributed to Judge Nighswander's strong criticism of Annals Popen and almost sympathetic criticism of Jennifer Popen.

The testimony upon the Inquiry, reinforced by the results of the trials of Annals Popen and Jennifer Popen upon the charge of manslaughter, satisfy me that Judge Nighswander was misled as to the relative roles of Annals Popen and Jennifer Popen in the abuse of Kim. I am satisfied that that occurred because of Mr. Carter's inadequate investigation of all of the incidents of abuse or alleged abuse and his inadequate preparation of the Society's application.

Mr. Carter did not testify upon the hearing of the Society's application; so the Court was not aware of the conflicting stories Jennifer Popen had given to him with reference to her life and experiences in Jamaica.

Upon the Inquiry Mr. Carter testified that he had felt that Jennifer Popen was affected by events which she said had occurred in her life in Jamaica. That was not mentioned upon the hearing of the Society's application. Upon the Society's application no testimony was given to explore whether or not there was any such effect and if so, what was it and what implication might it have for Kim. Such testimony might have been helpful and might have caused the Court to encourage the Society to make some further effort to investigate Jennifer Popen's earlier experiences.

While brief reports by Dr. Curtin, a psychiatrist, following interviews with Jennifer Popen and Annals Popen, were obtained in connection with the sentencing of Annals Popen in March, 1976, no effort was made to obtain any such information prior to the hearing and determination of the Society's application even though, in his testimony upon the Inquiry, Mr. Carter said psychiatric or psychological assessments might have been helpful. I share his view and can only wonder why he did not seek to obtain such assessments to assist himself and the Society in performance of statutory duties and in the making of decisions in respect of Kim.

Upon the Inquiry Mr. Carter testified that Jennifer Popen had told him of "visions" she had of her mother and that she came to his office on one occasion because, in such a vision, her mother had told her to go there. That was not mentioned upon the hearing of the Society's application. That too would have been useful in assisting the Court and the Society to assess Jennifer Popen's ability or capacity as a mother to Kim.

Mrs. Harvey, understandably since she was acting as a court worker for the Society, did not testify; so the Court was not aware of her opinion of Jennifer Popen's credibility or involvement.

Kim's life and injuries were reduced to a reading in of the Crown brief, as read by the Assistant Crown Attorney upon Annals Popen's trial in the Court two days earlier. It was brief, inaccurate and incomplete.

It correctly stated Kim's date of birth as January 11, 1975.

It correctly described her admission to hospital on March 22, 1975 with a fractured left arm.

It incorrectly stated Kim was admitted to hospital on April 22, 1975 with black eyes.

It omitted reference to her admission to hospital on April 28, 1975 with upper respiratory infection and slight dehydration.

It incorrectly stated that Dr. Jumean observed Kim had a black eye while in hospital after admission on April 28, 1975.

It referred to Dr. Jumean's seeing Kim with bruises and a cut lip in his office on June 16, 1975. That portion continued to state that three weeks after Kim was in his office he saw her in hospital with a respiratory ailment and observed she had a black eye. It continued that on June 24, 1975 Dr. Jumean reported his suspicions to the Sarnia Police. All of that is a jumble of errors and confusion.

It correctly stated her admission to hospital on August 31, 1975 with a fractured arm, bruises and other injuries.

It made no mention of the healing fractures of Kim's ribs discovered by X-ray after her admission to hospital on August 31, 1975.

It made no mention of Mrs. Hewitt's encounter with Jennifer Popen and Kim in a shopping mall, between April and August 31, 1975, when she noticed Kim had black eyes.

It made no mention of Mrs. Saul's observations and opinion on June 17, 1975.

Seven witnesses produced by the Society testified upon the hearing of the application. I have reviewed their testimony generally in Chapter XIV of the Report. It was brief and incomplete. Some of the testimony most supportive of the Society's application was contained in responses by those witnesses to questions put to them in cross-examination or by Judge Nighswander.

In examination in chief Police Constable Wyville described his observation of Kim's injuries on August 31, 1975. Only upon cross-examination was he asked about the different stories about or explanations for those injuries which Jennifer Popen gave to him.

The Director of Medical Records of the hospital testified as to Kim's admissions to hospital and one episode in which she was treated as an outpatient. That list of admissions and treatment did not agree with the statement read from the Crown brief by the Assistant Crown Attorney upon Annals Popen's trial on February 23, 1976 and read in as part of the evidence upon the Society's hearing.

The two portions of testimony were in agreement that Kim was admitted to hospital on March 22, 1975 with a fractured left arm.

The medical records disclosed that Kim, as an outpatient, was treated for an upper respitory infection on April 12, 1975. That was not mentioned in the Crown brief.

The Crown brief contained a statement that Kim was admitted to hospital on April 22, 1975 with black eyes. The medical records do not mention such an admission or injury.

The medical records showed that Kim was admitted to hospital on April 28, 1975 for treatment of bronchiolitis. That admission is not mentioned in the Crown brief.

The Crown brief and the medical records both disclose Kim's admission to hospital on August 31, 1975 with a fractured arm and bruises.

The discrepancies between the two portions of testimony are apparent. There was no testimony to indicate that Mr. Carter had made any effort to resolve, reconcile or explain them. In my opinion such effort would reasonably be expected of anyone, with reasonable knowledge and skill as a social worker, preparing the Society's application for hearing.

Dr. Singh in examination in chief was asked only about the injuries Kim had suffered in March, 1975 and Jennifer Popen's explanations therefor. Only in cross-examination was he asked about the injuries she suffered in August, 1975 and Jennifer Popen's explanations therefor. He made no mention of black eyes or fractured ribs.

Mrs. Hewitt testified as to her observations of Kim and her parents and Jennifer Popen's explanations for Kim's injuries on her admission to hospital on March 22, April 22, April 28 and August 31, 1975 with particular emphasis upon the injuries suffered in August, 1975. She too made no mention of black eyes or fractured ribs although, upon the Inquiry, she testified as to seeing Kim with black eyes in the mall.

Mrs. Dick testified as to the events at the hospital on August 31, 1975.

Mrs. Kirby testified as to the Society's care of Kim while she was in a foster home and her visits with her parents.

The statement from the Crown brief mentioned Dr. Jumean's observation of Kim, supposedly on June 16, 1975, and his report to the Sarnia Police Force, supposedly on June 24, 1975. It also mentioned that Dr. Jumean had seen Kim with a black eye while she was in hospital with a respiratory infection. It is difficult to affix dates to items in this portion of the Crown brief and to reconcile them with hospital records and other testimony. Some dates mentioned are clearly wrong.

The portion of the Crown brief outlining what testimony Dr. Jumean was expected to give if he were called was as follows:

> "On June 16/75 the child was brought to his office with a cut lip and severe bruises over her face, neck and buttocks. Approximately 6 weeks prior to this, the child was hospitalized with a broken arm. Approximately 3 weeks prior to the child being brought to his office, she was checked by him at the hospital for a respiratory ailment and at that time he observed she had a black eye. On June 16, 1975, he can say he reported to the police he believed the child was battered."

I have found in this Inquiry that Dr. Jumean saw Kim in his office on June 6, 1975 rather than on June 16, 1975. The testimony of Dr. Jumean and police officers upon the Inquiry was that he reported the matter to the police on June 16, 1975, not on June 24.

The reference to Kim's being in hospital with a respiratory infection and a black eye "three weeks after the child was brought to his office," presumably on June 16, 1975 for that is the only office visit mentioned, is not supported by any testimony either upon the trial of Annals Popen or the hearing of the Society's application in February, 1976 or upon this Inquiry.

It is interesting to note that there was no mention in all of this that on June 17, 1975 the Society had been notified of Dr. Jumean's telephone call to the police and that Mrs. Saul and Mrs. Hoad, on behalf of the Society, had visited Kim and her parents, but, inexplicably, the Society had not carried out procedures which had then been deemed necessary or desirable.

There was no testimony upon the Inquiry to indicate that Mr. Carter made any effort to resolve or reconcile any of the inconsistencies or contradictions in all of this or to supplement any of the inadequacies or deficiencies.

In Chapter XIV I have set forth a comparison of the testimony upon the hearing of the

Society's application and the corresponding testimony upon this Inquiry. Really they defy comparison, but I believe my comments demonstrate how much more information could have been given to Judge Nighswander if the Society's application had been properly prepared and presented. Mr. Carter is responsible for the poor and incomplete preparation.

In Chapter XIV I have commented adversely upon Mrs. Harvey's presentation of the Society's application on February 25, 1976. Mr. Carter's poor preparation of the application contributed to that part of Mrs. Harvey's downfall. He is not excused from that responsibility because Mrs. Harvey was willing to accept and present an inadequately prepared application.

Mr. Carter himself summed it all up rather well when he said that on February 19, 1976, when confronted by Mrs. Kirby, Police Constable Wyville, Police Constable Charlton and Mr. Carter, Mrs. Harvey was not familiar with the evidence which he had gathered for presentation upon the Society's application on February 25, 1976 "unless she had directly interviewed each of the witnesses that [he] had subpoenaed." In my opinion it was incumbent upon Mr. Carter, in some way, to have apprised Mrs. Harvey of that evidence.

I am satisfied on the testimony of both Mrs. Harvey and Mr. Carter that he did not adequately inform Mrs. Harvey of the testimony the various witnesses might give. There was no testimony that the two of them had any sort of conference before the hearing to determine what evidence was available and what witnesses might be called.

The absence of any such conference was clearly demonstrated by Mr. Carter's testimony that, until Mrs. Harvey advised the Court otherwise at the opening of the hearing on February 25, 1976, he had understood the Society was applying to have custody of Kim for six months. Upon the Inquiry he stated his persistent belief that Society wardship of Kim for a period of six months was an appropriate goal for the application.

It is further demonstrated by Mr. Carter's testimony that he was not called upon to testify upon the hearing of the Society's application. I inferred from that testimony that he felt he had information which might have been helpful to the Court, but which he was prevented from giving.

Mr. Carter with Mrs. Harvey, must bear responsibility for the absence of any such conference and his inadequate brief for her use. As an experienced social worker he should have known the need for such a conference and complete briefing of the Society's court worker. That need would be ever so much more important in a case as serious as Kim's.

In summary of this area, I find Mr. Carter did not fulfill his duties to Kim between September 2, 1975 and February 25, 1976.

He imposed some restrictions upon his own powers and obligations of investigation and normal case work. He was in error to do so.

With Mrs. Harvey's expressed concurrence, he accepted Mr. Higgins' later additional restriction in those areas. He was in error to do so.

With Mrs. Harvey's tacit concurrence he failed to keep her fully informed of what little he did do in Kim's case. He placed nothing in the permanent recording of Kim's case until after he was relieved of the case on February 25, 1976. In my opinion, on the testimony of the qualified and experienced persons who testified upon the Inquiry, that was a failure for which Mr. Carter is responsible. There was not, until after February 25, 1976, any record, in permanent form, of his actions, observations and opinions.

In the same vein, Mr. Carter was in default of the requirements of section 14 of Regulation 86 made under The Child Welfare Act. He failed to record, within twenty-one days of August 31, 1975, information as to his investigation of the report that Kim had been abused and his determination as to whether Kim was or was not a child in need of protection.

Clearly, in the opinion of the Society, confirmed by the order of the Court made on February 25, 1976, Kim was a child in need of protection.

That same section of Regulation 86 required the Society, within that same period of twenty-one days, to record a tentative plan for Kim's welfare and the steps taken to implement it. Mr. Carter made no such recording.

Mr. Carter's own testimony acknowledged he had not conducted an appropriate investigation. He relied upon the police.

But, in cross-examination, he was asked,

> "...did you have my discussion with the officers about they having interrogated or interviewed the Popens to obtain admissions or confessions?"

and he replied,

> "I have no information concerning their interrogation or communication."

Thus not only did he fail to conduct the necessary investigation, but he failed to obtain information from the police who, he felt, had the responsibility to investigate.

His own testimony acknowledged that he had not formulated any plan or goals for Kim's welfare. Thus he could have taken no steps to implement any such plan.

Upon the Inquiry he was asked the following question and made the following answer:

> "Q. So between the 2nd of September, 1975 and the 25th of February, 1976, did you start on your future planning for Kim Anne Popen? Did you start going into that area?
>
> A. No."

Section 15 of Regulation 86 requires a society, within sixty days of the admission of a child to its care, to prepare and record a plan for the care, treatment and progress of the child while in its care. That plan is to be reviewed every three months.

Mr. Carter was in default of that section. He prepared no such plan and, *a fortiori*, he reviewed no such plan.

Thus his failures arose either out of ignorance of the requirements of the Regulations or out of neglect either to investigate and prepare plans or to record as required by the Regulation. Either way Mr. Carter bears the responsibility.

Mr. Carter acknowledged in his testimony that speedy determination of issues such as those involved in the Society's application in respect of Kim is desirable. He had some responsibility to ensure that a speedy determination was obtained.

In my opinion Mr. Carter is not to be criticized for the adjournment from September 8, 1975 to October 29, 1975. An adjournment was needed by the Society and by Mr. Higgins on behalf of Jennifer Popen and Annals Popen.

In my opinion it would be unfair to place on Mr. Carter full responsibility for the adjournment from October 29, 1975 to January 19, 1976. But his failure to maintain close liaison with the Sarnia Police Force and the office of the Crown Attorney with reference to the prosecution of the charge under section 40 of The Child Welfare Act did contribute to the problem. He testified that he was not aware that anyone from the Society had spoken with the Crown Attorney about the matter. That liaison might have prevented the two proceedings being begun in different courts.

However Mr. Carter, responsible for the preparation of the Society's application, shares, in large measure with Mrs. Harvey, responsibility for the adjournment from January 19, 1976 to February 25, 1976. He failed to have a necessary witness available for the hearing. That was his responsibility.

Had the matter proceeded at any time before February, 1976 another of Mr. Carter's inadequacies might not have come to light. He testified that, when he learned of the agreement between the Crown Attorney and Mr. Higgins as to the disposition of the charge against Annals Popen and Jennifer Popen under

The Child Welfare Act, he felt the Society's application would have little chance of success.

He testified that he and others in the Society suspected that Jennifer Popen had caused Kim's injuries and that the withdrawal of the charge against her somehow inhibited the Society's presentation of its case and created the possibility that the Court might find that Kim was not a child in need of protection.

He testified that he relied upon a finding of guilt against both of Jennifer Popen and Annals Popen to "substantiate" the Society's submission. He said that when he learned of the agreement his "reaction was 'well I really don't have much to go on myself.'"

I regard that as an acknowledgement by Mr. Carter that he had not adequately performed his duties. So many of the qualified and experienced persons who testified upon the Inquiry spoke of so many indications of danger to Kim that were revealed by the information contained in Mr. Lovatt's reports to the Central Registry and in the recordings of the Society, including those belatedly prepared by Mr. Carter. Their opinions were supplemented by information available in 1975 and 1976, but not gathered and assessed until December, 1977 and the months thereafter.

In my opinion Mr. Carter did not correctly appreciate the different natures of the two proceedings. I do not accept that a finding of guilt against either or both of Annals Popen and Jennifer Popen was essential to enable the Society to succeed upon its application.

In any event, on his own testimony, Mr. Carter was aware of the agreement between the Crown Attorney and Mr. Higgins on February 19, 1976 about one week before the scheduled hearing of the Society's application. It was not then too late for him at least to begin to do some of the investigation and case work he should have been doing earlier. But he continued his programme or policy of non-involvement and nonactivity and unquestioned adherence to Mr. Higgins' restrictions.

He sought no advice from anyone. He complained to no one.

His predicament was of his own making.

He relied upon the police to investigate; so he did virtually none himself.

He "respected" Mr. Higgins' advice to Jennifer Popen and Annals Popen in September, 1975 that they should not talk with Mr. Carter.

He believed that the laying of the charge under section 40 of The Child Welfare Act prevented him from conducting normal case work; so he refrained from carrying out usual and appropriate procedures.

He complied with Mr. Higgins' injunction against contact with Jennifer Popen and Annals Popen in January and February, 1976 even though he "considered it hindered [his] normal case work practice" and "felt [he] did not have routine access to [his] client based on her legal representation and restrictions placed by Mr. Higgins".

The absurdity of Mr. Carter's position, in relation to his failure to investigate, to carry out normal case work practices and to interview Jennifer Popen and Annals Popen, is best illustrated by two questions put to him in cross-examination and his responses thereto.

In approaching the questions counsel had obtained Mr. Carter's agreement that, as soon as he learned that Annals Popen and Jennifer Popen were represented by Mr. Higgins, which was on September 8, 1975, he had decided to adopt his "usual courtesy and not interfere with the solicitor and client relationship." That was reinforced later in September, 1975 when Jennifer Popen and Annals Popen informed him of Mr. Higgins' advice that they not speak with Mr. Carter. He said even a letter from Mr. Higgins' office in November, 1975, inquiring about more liberal visits of Kim with her parents" conveyed to him a restriction upon his contact with Annals Popen and Jennifer Popen.

The two questions and Mr. Carter's responses to them were:

> "Q. ... And you felt that inherent in - the mere fact that the letter was being written to you, that they were going to the trouble of writing a letter, inherent in that was the instruction or injunction to you not to interview the client about the case?
>
> A. Yes.
>
> Q. Isn't it fair to characterize your position as this, that as soon as you learned that a lawyer who is known to be rather vigorous in their representation of his clients was involved in the case, you automatically adopted this courteous position that you've described of not creating a further disturbance with the law firm? Isn't that about it?
>
> A. Correct."

Thus Mr. Carter was in a ludicrous position of his own making and he sought no help to escape from it.

He was the worker assigned by the Society to provide to Kim some of the services which the Society was obliged to provide to her under section 6 of The Child Welfare Act. Mrs. Kirby and others associated with the Children's Services Department of the Society were providing other services to Kim.

One service the Society should have provided to Kim was, in paraphrase of the legislation, investigation of the allegation or evidence that she might be in need of protection.

Another was to protect Kim. Until February 25, 1976 Kim was physically in a place of safety, but her continued safety depended upon the outcome of the hearing of the Society's application on that day.

Another was to provide guidance, counselling and other services to Kim's family to protect her or to prevent circumstances which would require her protection.

Mr. Carter was the worker who should have provided all of those services to Kim.

He did little, if anything, to meet his commitments.

He did not investigate in any real sense.

He did not prepare sufficiently and well for the hearing of the Society's application. He had some doubts that it would succeed, but even those doubts did not spur him to further action.

He did not provide any guidance, counselling and other services to Kim's family to protect her or to prevent her being in danger in her own home. He had virtually no contact with Jennifer Popen and Annals Popen from late September, 1975 until mid-February, 1976.

Here was a man who put courtesy to a solicitor and respect for the relationship of solicitor and client ahead of his duties to Kim.

In all of this Mr. Carter failed Kim.

One should be courteous. One should have respect for professional relationships. But Mr. Carter could have been courteous to and respectful of Mr. Higgins while serving Kim's interests. He was courteous and respectful only at the loss of protection to Kim.

Mr. Carter did not meet Dr. Turner's expectation that a qualified social worker would have challenged Mr. Higgins' attempt to restrict the social worker's performance of duty.

Mr. Carter testified that he had considered the adviseability of obtaining a psychiatric or psychological assessment of Jennifer Popen, but he had not recommended it. He said:

> "A. It would have been helpful, the exception being I felt that with morality and her doctor involved this would have been a process they would have attended to.

Q. So, at no point you recommended such assessment?

A. I did not recommend to anyone specifically."

In that response he was saying that he was relying upon the police and Jennifer Popen's doctor, unnamed, but presumably Dr. Jumean, to obtain any such assessment. But his testimony was that he had not recommended it to them or advised them of his expectation that they would attend to it.

The adverb "specifically" in that response appears to be unnecessary and meaningless.

That was a further illustration of lack of preparation of the Society's application. He felt the police or doctor would do something; he did not suggest it to them; he did not ask if it had been done. It was not done.

It would seem that while he had arranged for witnesses to be physically present and to testify if called upon he had not really learned what their testimony might be. Without that information he could not have known whether the Society's application was ready for hearing. He could not have known if additional persons were required to establish facts upon which he and the Society relied.

An enlargement of that failure by Mr. Carter was that, although he recognized that it was important to obtain information upon the background of Jennifer Popen and Annals Popen, he did not obtain such information. He did not try to do so apart from some discussions with them early in September, 1975 before they informed him of Mr. Higgins' advice that they not speak with Mr. Carter.

That was the sort of information which Dr. Turner said should have been obtained by the Society in June, 1975 and in September, 1975. He spoke of it as being psycho-social histories.

That was part of the information that should have been obtained to support the Society's position and to enable it to prepare and execute its plans to protect Kim and to assist her parents. It was part of the routine case work that Mr. Carter should have done. But he did not do it.

Mr. Carter did testify that he had interviewed the various witnesses who testified upon the hearing. There was no testimony to indicate the subject matter of any such interviews and nothing from the Society's files was produced to indicate that anything was placed in those files to record, in any way, for the hearing or otherwise, the fact of such interviews and the nature thereof. I infer from Mrs. Harvey's limited examination of those witnesses that she had little, if any, information as to what testimony they might give and what Mr. Carter expected then to give.

Thus, in my opinion, in all of this, Mr. Carter failed Kim and that failure contributed to the ultimate tragedy.

Mr. Carter made no formal recording of incidents in Kim's case until after he was removed by Mrs. Harvey. Then he purported to record all that had happened from August 31, 1975 to February 25, 1976.

I am satisfied that it would have been more appropriate and useful to Kim and to anyone involved in her case if he had made entries in the recordings at appropriate intervals during those six months.

I am aware that there was testimony upon the Inquiry to the effect that some workers or societies have been criticized because their records were too detailed and voluminous and, as a result, there had been a movement to record events in blocks of time rather than event by event.

I am mindful of Dr. Turner's criticism of the recordings in the Society. He spoke of them as being merely reportorial, lacking in assessment or evaluative components and not meeting the standards one would reasonably expect of professional social workers.

Mr. Carter's recording was not excepted by Dr. Turner, although Dr. Turner did feel there were some areas of Mr. Carter's recording which went part way toward a desirable or acceptable standard.

Apart from the deficient and belated recording made by Mr. Carter, he continued his failure to perform adequately towards Kim even after he was removed from her case. His duty to Kim did not end on February 25, 1976 when Mrs. Harvey informed him that thenceforth Mrs. Lo would handle the case.

Mr. Carter knew that. He prepared the recording for the file so that it would be available to Mrs. Lo, Mrs. Harvey and anyone else who might be involved.

But Mr. Carter also knew the usual and acceptable practice to be followed when a case is transferred from one worker to another. He knew that there should have been a conference about that transfer of Kim's case from him to Mrs. Lo. He knew that at least Mrs. Harvey, as Supervisor, Mrs. Lo as the incoming worker, and he, as the retiring worker, should have met to discuss the case and its ramifications. It might have been appropriate for others of the Society's personnel to attend that conference.

That practice was not followed and Mr. Carter took no step to try to arrange it. Such a conference might have been very helpful to Mrs. Lo. I appreciate that Mrs. Harvey, as Supervisor, should have convened such a conference and Mrs. Lo, as the incoming worker who would directly benefit from it, should have urged Mrs. Harvey to convene such a conference or should have sought out Mr. Carter for a private briefing.

Mr. Carter is not to be excused from criticism for this last item of failure just because neither Mrs. Harvey nor Mrs. Lo did what might reasonably have been expected of them. Mr. Carter, an experienced worker, knew or should have known the value of such a conference, particularly to a worker as inexperienced and unqualified as Mrs. Lo. His failure to insist upon such a conference, or at least a meeting with Mrs. Lo, was the last of his several failures to Kim.

Mr. Carter's defence, as it were, to this last criticism was that he had prepared a complete recording for Kim's file which Mrs. Lo could have read if she were so minded.

The transparency of that defence is apparent. Mr. Carter knew that there were often lengthy periods of time before workers' notes or dictations were transcribed. He knew that he had put nothing in the file. He knew Mrs. Lo would be entering upon the case immediately. He knew she had been employed by the Society for less than three months. He knew it was a difficult case of a sort which required a worker with previous experience, a knowledge of the community and its resources and with a good liaison with community services such as the police and medical services.

Mrs. Lo met none of the requirements he felt were appropriate for a worker assigned to Kim's case. He made no inquiries to learn Mrs. Lo's qualifications. If he did not know, it is my opinion that he should have known that Mrs. Lo lacked the necessary qualifications even as minimal as he himself said were required.

A further weakness of that defence is found in Mr. Carter's testimony in which he identified errors in or omissions from the transcript purporting to record his notes or dictation. I have already expressed my opinion that the records of the Society are not reliable. Mr. Carter was expressing the same view.

I cannot imagine that this was the first instance in which he found incorrect transcription of his notes. The testimony upon the Inquiry satisfied me that the recordings of the Society were not reliable. There were errors, omissions, inconsistencies, contradictions and confusion.

It is inappropriate for Mr. Carter to suggest that it would be sufficient for Mrs. Lo to read the recording in the file. He knew or should have known it might not correctly reflect what he had written or dictated. Even if the transcript were fully accurate it could not replace a conference in which he could enlarge upon or explain his written record and answer any question Mrs. Lo or Mrs. Harvey might have had, But he had not prepared any recording until after Mrs. Lo had begun to visit the Popen home.

The last employee of the Society to have direct involvement in Kim's case was Mrs. Shirley Lo.

An examination of her *curriculum vitae* in Schedule 1-E to the Report reveals her almost absolute lack of qualification or experience to justify her selection by Mrs. Harvey as the worker to manage Kim's case from February 25, 1976.

One cannot help but recognize that Mrs. Lo was "in over head," as was said upon the Inquiry. That recognition leads to a sort of sympathy for her or a feeling that she too was a victim of Kim's case. Almost everyone who was involved in Kim's case was a victim of it, but I think Mrs. Lo was more so than some others. She was less able to defend herself than others were able to defend themselves.

Nonetheless Mrs. Lo must accept responsibility for any deficiencies or inadequacies in the services she, on behalf of the Society, rendered to or for Kim.

She sought and accepted employment by the Society. She was somewhat surprised that she had been offered employment.

She accepted assignment of responsibility for Kim's case. She may not have fully realized its full ramification and complexity, but she knew its general nature and that it was regarded as being a serious case.

Mrs. Lo was employed by the Society in December, 1975 and, until Kim's case was transferred to her, she had been given personal and direct responsibility for very few cases. I sensed that for the most part she was much like an apprentice. She was able to overhear and observe other workers performing their various tasks.

She said Mrs. Kirby was the first to tell her that Mrs. Harvey would be tranferring Kim's case to her. That was in mid-February, 1976, before the hearing of the Society's application.

Later, Mrs. Harvey informed her of the transfer and gave her some information about the case and its difficulties. Mrs. Lo had had no experience with any case of child abuse.

She understood that there was difficulty between Mr. Carter and Kim's parents and that it was felt that the fact that she was a young, recent immigrant to Canada with a young child would be favourable to a good relationship with Jennifer Popen.

I am prepared to accept that Mrs. Lo did not realize the full gravity of her assignment in February, 1976 and that, in view of her lack of training and experience in social work, it might have been unreasonable then to have expected her to have been able to make that realization.

However, in an extension of Dr. Turner's opinion that social workers have an obligation to keep their knowledge and skills current, I do believe that, in the succeeding months, Mrs. Lo should have been able to realize that Kim's case was too serious and too complex for her to deal with, even with Mrs. Harvey's guidance.

I am satisfied, on the testimony, that cases of child abuse must be managed or treated by persons with high levels of training supplemented by practical experience. I am similarly satisfied that recognition of symptoms of child abuse is difficult because of their diversity, their many subtleties and their many complexities. I am similarly satisfied that detection, recognition, management and treatment of cases of child abuse often require the inter-disciplinary co-operation of a variety of professions and skills.

In my opinion even the most perfunctory reading of textbooks and other material upon the subject of child abuse should have caused Mrs. Lo to recognize that she was "in over her head." She should then have asked to be relieved of the case or to work on it in some other capacity, perhaps as an assistant to a more senior, experienced and qualified worker.

I would think too that Mrs. Lo, from discussions with other members of the staff of the Society, would have learned that Kim's case was an unusual case for the Society and therefore might be expected to present unusual and difficult problems.

While it is my opinion that Mrs. Harvey, as Supervisor, bears the greater burden of responsibility for Mrs. Lo's assignment to Kim's case, Mrs. Lo must bear some part of the responsibility for accepting and retaining the assignment.

I am satisfied that Mrs. Lo is an intelligent person with good intentions and with a desire to perform her duties well. But in 1976 she did not have the training, knowledge, skills and experience necessary to enable her to serve Kim properly. Her recent arrival in Sarnia, compounded by her more recent employment by the Society, had not enabled her to establish the network of personal contacts with persons, authorities and organizations in the City of Sarnia and the County of Lambton which are necessary complements of the other qualifications for a social worker.

In my opinion Mrs. Lo's first mistake, after accepting the assignment, was to visit Jennifer Popen before speaking with Mr. Carter. She had read the brief recording which was then in the file, but Mr. Carter's lengthy recording for the period from September 2, 1975 to February 25, 1976 had not been transcribed. So all she could have read were Mrs. Saul's recording with reference to June 17, 1975 and Mrs. Dick's recordings with reference to June 17 and August 31, 1975. They would not have given her much information. I assume Mrs. Harvey would have supplemented that somewhat, but I am not satisfied that, even then, Mrs. Harvey was fully aware of what Mr. Carter knew or thought about the case.

While Mrs. Harvey and Mr. Carter share the responsibility with her, Mrs. Lo has some responsibility for the absence of any conference surrounding the transfer of the case to her. From the testimony upon the Inquiry I am satisfied that the need for such a conference was well-known and elementary even in the Society. Even if Mrs. Harvey and Mr. Carter did not take the initiative, Mrs. Lo should have gone to Mr. Carter to gain the benefit of his knowledge of and experience with Kim and her family and his opinions about what had happened and what might be expected to happen. She might even have asked him to accompany her and to introduce her to Jennifer Popen and Annals Popen.

By entering upon the case without prior information and assistance from Mr. Carter she did a disservice to herself and to Kim. Both she and Kim suffered as a result.

On the testimony upon the Inquiry I am satisfied that Mrs. Lo visited Kim's home on an appropriate number of occasions. By that I mean that the number and frequency of her visits was generally sufficient if she had been adequately qualified to manage the case.

In the same way I am satisfied that, given Mrs. Lo's lack of qualification, no number of visits by her would have been sufficient to constitute fulfillment of her duty and that of the Society to protect Kim. She was merely the "friendly visitor" mentioned in testimony.

Mrs. Lo's recordings in the files of the Society support that view. It was to her recording that Dr. Turner directed many of his comments expressing dissatisfaction with the recordings in Kim's file. I have set forth Dr. Turner's comments in some detail in Chapter XXX of the Report.

In summary, as I understood Dr. Turner, his opinion was that Mrs. Lo's recordings were good reporting in the sense of saying what she observed, but they lacked everything else that should be contained in a recording by a professional social worker.

They did not show her perception of the case. They did not express any opinion she may have had. They did not contain any evaluation or assessment of what she observed. They did not indicate that she recognized that anything she observed was of any particular significance.

Her recordings were not satisfactory and did not meet reasonable standards.

Dr. Turner said that Mrs. Lo's recordings did not set forth any statement of the Society's goals in Kim's case and the means it intended to employ to achieve those goals.

One example of that is that Mrs. Lo, in her testimony upon the Inquiry, said that she had understood from Mrs. Harvey that the Society "had six months' Society wardship of [Kim] and it had been our case goal to return the child to her home."

I have read Mr. Carter's recording in Kim's file. It does not set forth any goal for attainment by the Society. Indeed it states:

> "With regard to worker/client case relationships, case goals etc. this was legally restricted by the Popen's (sic) lawyer..."

However, as I have written in Chapter XIV of the Report, I am satisfied that Mrs. Harvey had decided, before February 25, 1976, that Kim would be returned to her home.

I then turned to Mrs. Lo's recordings. There is no mention of any goal in the recording under date of February 27, 1976 even though two paragraphs are entitled "Assessment" and "Plan." The "plan" was simply for Mrs. Lo to visit the home often and to try to offer encouragement, understanding and help. That is really skeletal.

Under date of March 4, 1976, Mrs. Lo wrote "Once Kim comes home to stay the situation will be different." That was not set out as a goal to be attained. I am satisfied on Mrs. Lo's testimony that when she wrote that item she felt it was a foregone conclusion that Kim would be returned.

That, as well as her lack of knowledge of The Child Welfare Act and of court proceedings thereunder, is illustrated in the following series of questions put to her and her responses thereto:

> "Q. At the time you took over the file in middle or late February 1976 what did you understand the situation was with respect to Kim and what her future was to be?
>
> A. What do you mean future?
>
> Q. Where she was going to be kept, was she going to be kept as a ward of the

> Children's Aid Society or was she going to be returned to her parents or was there any understanding or decision made at that time?
>
> A. My impression at that time was the child would return home eventually.
>
> Q. Who gave you that impression?
>
> A. We had six months' Society wardship at that time and my understanding was that when the wardship expires if there are any special reasons the child would return home.
>
> Q. Unless there were special reasons, is that what you say?
>
> A. Yes.
>
> Q. Well, just because you had a six months' wardship you know now doesn't mean that you couldn't have applied for permanent wardship at any time or applied for an extension of the temporary wardship.
>
> A. I know now, yes.
>
> Q. You mean you didn't understand that at that time?
>
> A. I wasn't completely aware of that at that time.
>
> Q. So you understood from the beginning that the child was to be returned to its parents?
>
> A. True."

and, a bit later:

> "Q. When you took over the file it was just presumed as far as you were concerned that the child was being returned eventually to the parents?

> A. Yes.
>
> Q. And you didn't even know that any other course could have been taken?
>
> A. I knew that the child could be made a Crown ward, but my feeling at that time was if we only got six months Society wardship at that time there was little chance that we could get Crown wardship later on."

and, later, in cross-examination:

> "Q. You knew that the initial Society wardship was for six months, and I believe that it was your testimony that "I was not completely aware at that time that wardship might be extended". Is that a fair -
>
> A. I think rather I was aware that the Society wardship could be extended but not in this case, I think I believed that it would be very difficult."

Thus I am satisfied that that mention of Kim's return was not the statement of a goal set by her or the Society, but it really was the statement of something, virtually inevitable, which would probably have to be accepted by the Society.

It was not until her recording under date of March 18, 1976 that Mrs. Lo wrote of making Kim's return home before the birth of the new baby "a goal for all of us [Annals Popen, Jennifer Popen and she] to work at for the time being." That was followed somewhat later by the comment "we know Kim would come back shortly." I infer that, even though Mrs. Lo, in conversation with Annals Popen and Jennifer Popen, spoke of Kim's return as "a goal for all of us" she still regarded it as an inevitable consequence of the decision of the Court on February 25, 1976. Mrs. Lo had not been present in the Court to hear that decision nor had she seen a transcript of the Court proceedings including Judge Nighswander's comments when pronouncing judgement.

The next item in Mrs. Lo's recording to contain mention of the possibility of Kim's return is under date May 6, 1976. It was written in the context of concern over the disruptive effect which Kim's visits with her parents had upon her. It was merely a statement of the alternative courses open to the Society considered by Mrs. Harvey, Mrs. Lois Eleanor Archer, Adoption Supervisor, Mrs. Kirby and Mrs. Lo and concluded as follows:

> "...it was decided that Kim should either be returned home as soon as possible, or home visits be stopped and Kim be returned after her parents are adjusted to the new baby."

There was no testimony to satisfy me that Mrs. Lo was expressing any opinion that Kim's return was an appropriate goal to be attained as distinct from an inevitable consequence to be endured.

The concluding sentence of that item in her recording is unintelligible to me. It is as follows:

> "Since the home situation has been greatly improved and both parents are doing their best to get things out of the P.E.T. course, it is determined when the home visit be made before we decided which alternative between the two we are going to choose."

I am satisfied that Mrs. Lo is expressing an opinion that the "home situation," whatever that may be, had improved. She sets out in earlier items a number of optimistic comments to that effect by Jennifer Popen and Annals Popen, but I am unable to find any real basis for the conclusion that the "home situation" had improved.

I am satisfied that Mrs. Lo is expressing her opinion that Annals Popen and Jennifer Popen were attempting to benefit from the Parent Effectiveness Training Course. Unfortunately for the validity of that opinion, the Course had begun only on April 26, 1976, ten days before Mrs. Lo made that recording, and Mrs. Lo had not determined whether Annals Popen and Jennifer Popen were benefitting from it.

There are two factors in my skepticism. The Course had just begun and mere attendance, even accompanied by effort, is not synonymous with benefit to Annals Popen and Jennifer Popen.

I need not belabour the point. Simply put, I am not satisfied that Mrs. Lo decided that Kim's return home was appropriate as opposed to having accepted that it was inevitable. To Mrs. Lo, Kim's return was not a goal to be achieved. To her, it was something which would almost inevitably follow in August, 1976 and the Society should prepare for it.

I am satisfied that Mrs. Lo was one of the staff of the Society who were found by the Farina Committee and Mr. Zwerver to have an inadequate knowledge of The Child Welfare Act and of child welfare practices and procedures.

I am satisfied that Mrs. Lo made many observations and recorded much of what she observed. I am not satisfied that she appreciated the significance of all that she observed and recorded. I am not satisfied that she recorded all that she observed and which, known or unknown to her, was of significance.

I accept the analogy given by Dr. Turner when he was asked if Mrs. Lo's lack of expertise and experience should not be factors to be considered in any assessment of her performance of her duties. Dr. Turner was not willing to say that she had performed well within the limits of her expertise and experience. The analogy he used was to assess the performance of one driving an automobile for the first time. He said an observer might say that that person drove well for a beginner, but that would not be equivalent to the observer saying that that person drove well or even adequately.

I share the sentiment inherent in that analogy. Mrs. Lo may have done well for one entirely unqualified to perform the task, but she did not perform her duties well or even adequately.

Kim was entitled to more from the Society and from Mrs. Lo.

I accept Dr. Turner's testimony that Mrs. Lo's recordings are not completely devoid of items which, if correctly interpreted and assessed, would have been useful in the process of making decisions in Kim's case.

I accept his further testimony that Mrs. Lo's recordings contain items which do indicate that, if a qualified and experienced social worker had been present at various events, such as conversations between Mrs. Lo and Jennifer Popen on February 27, 1976, that social worker might have pursued or exploited the discussion to prepare the psycho-social history which he felt was necessary to the proper management of Kim's case. The Society and Mrs. Lo did not obtain an adequate psycho-social history during Kim's lifetime.

In that latter area I am not prepared to accept that whatever Jennifer Popen told such a social worker, as he or she pursued the matter, would have been reliable. Dr. Curtin found her unreliable. Mr. Carter found her to be a "proverbial liar." I found her to be an unreliable witness even under oath.

I share Dr. Turner's view that Mrs. Lo seemed to accept naively whatever Jennifer Popen told her. He spoke of an "unevenness" in her recording mentioning Jennifer Popen's pleasant behaviour on occasion when considered in the light of the "hard indication" of repeated incidents of abuse to Kim.

In all of this criticism I recognize that Mrs. Lo was in a very real sense an extension of Mrs. Harvey who put her in a position for which she had utterly inadequate qualifications.

For that reason I do not propose to deal here, as part of my review of Mrs. Lo's performance, with Dr. Turner's opinion as to the contradictions inherent in Mrs. Lo's recording under date of May 6, 1976. He was surprised by the decision to discontinue Kim's visits preparatory to her return home while, at the same time, retaining intent to return her home.

The reference to Kim's regression after her visits home was one item which Dr. Turner felt was of significance and something to which a qualified social worker should have been alert. In his view it should have been carefully examined and analyzed. It was not.

Earlier I have written that, in terms of numbers of visits to Kim's home, Mrs. Lo's visits were adequate. But the substance of those visits was not adequate. Mrs. Lo was simply the "friendly visitor" mentioned in the testimony of various well qualified witnesses. She was well-meaning, but she was ineffective because she did not know what to do or how to do it or how to record, analyze and interpret it and whatever resulted from it after it was done.

An example of that lack of knowledge was illustrated by her failure to arrange to have Kim examined by a doctor after her return home on May 27, 1976. The illustration is enlarged by her failure to request, or demand if need be, that Kim be undressed so that Mrs. Lo might examine her for any marks or indications of injury that might be apparent upon such external examination.

Mrs. Lo knew that Kim had suffered injuries on at least two earlier occasions. She should have been aware of the allegations of at least two other occasions of alleged injury and the incident of the fractured ribs.

I accept Dr. Turner's testimony that the literature upon the subject of child abuse showed that such abuse was a recurring thing. Thus Mrs. Lo should have known that Kim, abused on prior occasions, might be abused again. Therefore the Society and Mrs. Lo should have arranged for Kim to be examined by a medical doctor at regular and short intervals of time after her return.

On the testimony upon the Inquiry I am satisfied that a lay person, such as Mrs. Lo, could not reasonably be expected to observe all of the injuries which were revealed upon the post-mortem examination of Kim's body. Nor could she be expected to recognize or assess the severity or likely cause of any injury she did observe.

I also accept Dr. Turner's testimony that in 1976 it was known that certain injuries, in which I assume he included the injuries to Kim's pelvic, vaginal and rectal areas, were not uncommon and that social workers had to be alert to them.

Thus I am satisfied that Mrs. Lo should have arranged for Kim to be examined by a medical doctor. In my opinion such examinations would serve two purposes. They would reveal any injury Kim may have suffered. More importantly to Kim, the knowledge that Mrs. Lo had arranged for Kim to be examined, say, bi-weekly, must surely have deterred anyone from abusing her.

In similar vein I am satisfied that the two purposes of medical examinations, revelation of injury done and deterrence of anyone from doing further injury, could only have been enhanced by Mrs. Lo establishing a practice of undressing Kim on some or most or all of her visits to the Popen home after Kim's return there on May 27, 1976.

All in all, I am satisfied that Mrs. Lo did not adequately perform the duties assigned to her. She failed Kim.

Mrs. Lo's failure arose from her own inadequate qualifications to perform those duties and from Mrs. Harvey's assignment of them to Mrs. Lo and then Mrs. Harvey's failure to provide adequate supervision, guidance, advice and assistance to Mrs. Lo.

Mrs. Lois Eleanor Archer is the only other social worker employed by the Society who had any involvement with Kim. Mrs. Archer was the Adoption Supervisor of the Society and, I gathered, that involved supervision of the Children's Services Department of the Society and Mrs. Kirby.

Thus Mrs. Archer's role was modest and indirect.

I am satisfied that Mrs. Archer was well-qualified for her position and had an extensive background in the fields of education and social work.

Mrs. Archer became aware of Kim and the Society's involvement with her while Kim was in hospital after her admission on August 31, 1975. She was aware that Kim would require care by the Society when released from hospital. Mrs. Archer was responsible for the assignment of Kim's case to Mrs. Kirby, but that assignment was, in effect, a predetermined selection. Kim, by reason of her age, was in the grouping of children in the care of the society who normally went into Mrs. Kirby's caseload.

Mrs. Archer acknowledged that in her long experience she had not been directly responsible for supervision of any case of abuse before Kim came into the care of the Society. She testified that no case for which she was responsible had been specifically designated as being a case of abuse. Mrs. Archer felt that in prior years fewer cases were so designated, but she was not prepared to say that that meant there had been fewer cases of abuse.

Mrs. Archer testified that Mrs. Kirby received no particular instructions as to the services she should provide for Kim. Mrs. Archer seemed to feel that, since Mrs. Kirby would ordinarily ensure that any child whose case she was managing received good care in a foster home and also received medical examinations and care by a doctor or paediatrician who was fully aware of the child's case and its history, it was not necessary for Mrs. Kirby to receive any special instruction with reference to Kim.

At first blush, on the testimony upon the Inquiry, I had felt that Mrs. Archer was perhaps in error in that view and that Mrs. Kirby should have received specific instructions about Kim. Since Kim had been a victim of physical abuse she might also have suffered other forms of abuse or neglect. I felt therefore that Mrs. Kirby should have been instructed to obtain some special care for or assessments of Kim. On reflection I am inclined to agree with Mrs. Archer. The continued involvement of Dr. Singh, a qualified paediatrician, who had been involved with Kim's care in March, 1975 and again in September, 1975, probably was sufficient to ensure that Kim received the best of medical care, including appropriate assessment of her development physically, psychologically and emotionally.

I am satisfied that Mrs. Archer interested herself appropriately in Kim's case. She made it a point to observe Kim from time to time when Kim was in the Society's office. That was to enable Mrs. Archer to provide more effective and helpful consultation in her weekly consultative and supervisory meetings with Mrs. Kirby. Mrs. Kirby kept Mrs. Archer well informed about Kim, but Mrs. Archer's own observations of Kim were helpful to a better understanding of Mrs. Kirby's reports to her.

Mrs. Archer's testimony was to the effect that she became aware of, but did not participate in the making of the decision to return Kim. She learned of it from Mrs. Kirby when Mrs. Kirby told her that the Society was arranging to have Kim visit her parents in their home. Mrs. Archer said that home visits were initiated in respect of every child who was to be returned home by the Society. I am satisfied that that is good practice.

Mrs. Archer testified that, until the decision was made by the Society to return a child to the family home, the Society required visits between the child and parents to be in the Society's offices except in unusual circumstances.

Mrs. Archer testified that she was not involved in or consulted about the decision to return Kim. She was not directly advised of the decision, but merely deduced it had been made when home visits by Kim were arranged. All of that was in keeping with the usual practice within the Society.

I accept Mrs. Archer's testimony in this whole area.

Mrs. Archer was aware of Mrs. Kirby's concern over Kim's proposed return home. She was also aware of the general nature of Police Constable Wyville's strongly expressed objection. That too was from Mrs. Kirby. Mrs. Archer was not able to say when she became aware of Mrs. Kirby's concern or Police Constable Wyville's remark.

Mrs. Archer testified that it was not unusual for workers in the Children's Services Department of the Society to be concerned about a decision that a child would be returned to his or her parents. She said that such decisions were not part of that department's "province."

I was surprised and disappointed to hear Mrs. Archer speak in rather defeatist tones when she testified in this area. My surprise and disappointment have a common root which remains as I write. That common root is my assessment of Mrs. Archer. I regard her as a dignified and gentle lady, highly dedicated to the ideals of service to others in her life's career of teaching and social work in Canada and abroad, highly qualified to meet her own high standards and with a will every bit as strong as that of Mrs. Harvey.

As I review her testimony in the light of all of the testimony upon the Inquiry my surprise and disappointment dissipate, but my high opinion of Mrs. Archer remains.

Mrs. Archer spoke of decisions to return children being made by the Family Services Department of the Society or by the Court. She continued:

> "...you might express opinions or feelings as we often do in many situations, but we didn't expect these expressions to have any great validity because we were not in the decision-making position."

When asked if the Children's Services Department was not in such a position because it did not have all the facts, she replied:

> "This is true and you see we were aware of this because in many situations, other situations, where children were going back we were really concerned and we may or may not voice our concern but in many ways it wasn't our business."

In another response, when asked if she or Mrs. Kirby had expressed any concern about Kim's proposed return when it was discussed early in May, 1976, but only as to when it was to be effected, she said:

> "Not that I am aware of because this was an area between the two departments where we had often disagreed very thoroughly because our outlook on the service to the client

> was totally different and there were many situations where we had concerns."

I am satisfied that that tone of defeat in Mrs. Archer's testimony came about because of the organization of the Society whereby Mrs. Harvey was granted or assumed and maintained a role of dominance through the Family Services Department. I initially felt that Mrs. Archer should have entered into the controversy and opposed the decision to return Kim. I am now satisfied she felt or knew it was a hopeless contest because of the development of the Society's organization and administration which gave the Family Services Department dominance with reference to the return of children from the care of the Society.

Thus Mrs. Archer's resignation, as it were, to the inevitable is understandable. But Kim might have benefitted if Mrs. Archer had chosen to wage one more good fight no matter how hopeless it might have seemed.

Mrs. Archer had no further involvement with Kim's care after her return home on May 27, 1976.

As I near the end of this Chapter I wish to make it abundantly clear that, while I have expressed varying degrees of criticism of members of the staff of the Society, it is criticism of their skills and expertise and of their performance of their various duties. I do not recall that anyone who testified upon the Inquiry said that any person associated with the Society was other than conscientious, concerned and hard-working. I am not to be taken to suggest otherwise.

The only other employee who testified was Mrs. Dorothy Winifred Myers. Mrs. Myers was the office manager of the Society.

Mrs. Myers testified as to the procedures followed by the Society in preparation and maintenance of files, records and associated materials.

Like everyone else, Mrs. Myers had no explanation for the hiatus in the administration of Kim's case between June 17 and August 31, 1975. That is understandable. No one put any record into a position where Mrs. Myers or any of her subordinates would have cause or opportunity to deal with it and to perform the usual administrative functions.

I am satisfied that Mrs. Myers properly fulfilled her duties in respect of Kim's case, including due and sufficient notification to Mrs. Harvey and Mrs. Lo in late July, 1976 that the initial order placing Kim in the care of the Society would expire in late August, 1976. At that time she inquired as to whether the Society would be making any further application to the Court in respect of Kim.

I am satisfied that Mrs. Myers and others in the office of the Society, if required or requested to do so, could and would have quite adequately done many of the tasks related to preparation of the budget and financial records of the Society. It was not the fault of Mrs. Myers and others of the office staff of the Society that Mr. Lovatt found such matters to be so demanding and time-consuming.

Mrs. Myers, in her testimony, spoke of rumours that pressure had been put upon the Society by Mr. Higgins. The tone of that testimony suggested that such pressure was improper.

I am satisfied that, if there were such rumours, there was no factual basis for them. Mr. Higgins certainly acted vigorously on behalf of his clients and that vigorous action may have created pressures for the Society. There was no improper pressure exerted upon the Society by Mr. Higgins or any one else. Nor was any pressure improperly exerted by Mr. Higgins.

Whatever sense of pressure existed was simply the result of a skilled advocate practicing his profession vigorously and effectively coupled with the inadequacies of the Society and its staff.

It may have been pressure, but it was not improper and it was not improperly applied.

Mrs. Myers in her testimony illustrated the validity of the concern expressed by the Farina Committee and Mr. Zwerver that there was not an appropriate separation between the professional or social work staff and the clerical or office staff of the Society. She testified that she attended management meetings and meetings of the staff, including office and clerical staff, called for the purpose of reviewing case work decisions and the rumours of improper pressure upon the Society.

Chapter XIX

The Role of the Sarnia Police Force

Before examining the role of the Sarnia Police Force in Kim's life, it is appropriate to refer to particular provisions of The Child Welfare Act as it was in 1975 and 1976. They are among those comprising Schedule 2-B to the Report. For the sake of brevity in this Chapter, I will describe The Child Welfare Act as the "Act" and the Sarnia Police Force as the "Force."

Section 21 of the Act gives to a constable or other police officer, who has reasonable and probably grounds to believe that a child is apparently in need of protection, authority to take that child to a place of safety and to detain the child pending application to a judge. The authority so given to police officers is the same as that given to persons such as the Director appointed under the Act and the local directors of children's aid societies or persons authorized by any of them.

Section 49 of the Act makes it an offence for any person having the care, custody, control or charge of a child to fail to protect that child.

The members of the Force, like all other members of the community, are subject to the provisions of section 41 of the Act. By that section every person having information about physical ill treatment of a child or of a child's need for protection is required to report the information to a children's aid society or Crown attorney.

The involvement of the Force in Kim's life began on Monday, June 16, 1975. At about 2:30 o'clock in the afternoon of that day, Dr. Jumean telephoned the Force. He spoke to Staff Sergeant James Allan, a police officer in charge of the Morality Office of the Force. The Morality Office of the Force is responsible for the investigation of cases or reports of child abuse.

Staff Sergeant Allan was aware that Dr. Jumean was a medical doctor practising in the City of Sarnia. Staff Sergeant Allan testified that Dr. Jumean stated that Kim had been brought to his office that day by a person who wished to remain anonymous. Dr. Jumean told Staff Sergeant Allan that Kim then had a cut and severe bruises on her face, neck and buttocks. Dr. Jumean continued to say that Kim had been admitted to hospital about six weeks previously when she had a broken arm. Dr. Jumean told Staff Sergeant Allan that about three weeks before his telephone call he had treated Kim for a respiratory problem and noticed she had then a black eye. In the same conversation Dr. Jumean spoke of what Staff Sergeant Allan chose to call "hearsay evidence" that Annals Popen, when drunk, assaulted Jennifer Popen who in turn beat Kim.

Dr. Jumean's testimony was confusing. I have dealt with the confusion in Chapter VI of the Report while reviewing events in Kim's life between April 30 and August 31, 1975. As set forth in that review, I am satisfied that Dr. Jumean telephoned to the Force on June 16, 1975, but Kim had been brought to his office on June 6, 1975.

In keeping with the procedure of the Force, Staff Sergeant Allan dictated a memorandum about that telephone call. That memorandum was typed as an item in the Force's Investigation Report upon the incident. As the matter proceeded, other items were added to the Investigation Report by police officers involved from time to time during Kim's life. A copy of it was filed as an exhibit upon the Inquiry.

When asked what action he had taken upon receipt of that information from Dr. Jumean his reply was:

> "A. I had nobody working that afternoon so the investigation was assigned to Constable Gander the following morning. He was advised to go to the Children's Aid and have a worker accompany him to the residence."

That action by Staff Sergeant Allan was not appropriate. Witnesses who appeared upon the Inquiry and who were asked any question about it were unanimous in the opinion that reports of abuse of children are matters of serious importance and should receive a high priority.

Police Constable Gander testified that he had been assigned to the investigation between 9 and 9:30 o'clock during the morning of June 17, 1975.

He was asked what he had done then. His reply was:

> "A. Well, I had to go to court that morning at ten o'clock and as soon as I got out of court I just went directly across to the Children's Aid Society. At approximately 10:20 A.M. I arrived there and talked to Mrs. Dick."

Police Constable Gander then had not acted immediately upon the assignment.

The effect of Staff Sergeant Allan's delay in assigning the case to Police Constable Gander, compounded by Police Constable Gander's delay of about one hour, was that for about twenty hours after receiving Dr. Jumean's telephone call the Force did nothing to ascertain whether or not Kim was in need of protection.

What I am about to write may be a harsh statement, but in my view it is merited. The Force's response to Dr. Jumean's telephone call was akin to dereliction of duty.

Some witnesses upon the Inquiry suggested that the source of any report of suspicion of child abuse might affect the initial assessment as to the validity of the report. The tenor of the suggestion was that reports from medical doctors would be given high credibility immediately because medical doctors, by training and experience, had abilities to detect and assess injuries that might not be observed by laypersons. They too might have some ability to detect the presence or possible presence of abuse in relation to any injury suffered by a child.

In this instance on June 16, 1975 at about 2:30 p.m., the Force had received from a medical doctor a statement that within the preceding six weeks Kim had been in hospital with a broken arm on one occasion, she had a black eye when treated for a respiratory ailment on another occasion and she had a cut lip and severe bruises on her face, neck and buttocks when presented to that doctor on yet another occasion. In six weeks three distinct incidents of a broken bone, a black eye, a cut lip and severe bruises, all apparently within the personal knowledge of the doctor reporting the matter to the Force.

In addition to that information, the doctor also reported to the Force the suspicion of his informant, whom he did not name, that Kim was the victim of abuse. He reported the suggested chain of assaults, beginning with the assault by a drunken father upon the mother who then assaulted the child.

It is incomprehensible to me that any police officer would, without immediate investigation of the circumstances in that child's home to satisfy himself or herself as to the child's present safety, permit the child to remain in that home. For about twenty hours Kim remained exposed to all the risks inherent in the circumstances reported by Dr. Jumean to the Force. There was a history of earlier illness and severe injuries. There was a suggestion of a drunken, abusive father and an abused and abusive mother. Even without more there was ample cause for concern for the safety of a child in such conditions.

Staff Sergeant Allan's only excuse for not assigning a police officer to make an immediate investigation was "I had nobody working that afternoon." Even if all other officers in the Morality Office were already assigned to equally important matters, and there was no suggestion they were, there must have been a member of the Force, on duty or available for duty, who could have been assigned to begin an immediate investigation.

Even if the Force were so understaffed and overworked as to prevent the immediate assignment of a police officer, and again there was no suggestion that that was the situation of the Force, a duty lay upon Staff Sergeant Allan and thus upon the Force to have reported the matter to a children's aid society or Crown attorney pursuant to section 41 of the Act. Such a report was not made until about twenty hours had expired.

When Police Constable Gander did report to the Children's Aid Society on June 17, 1975 he gave to Mrs. Dick and to Mrs. Saul of the Society the information which he had. The Society responded promptly.

However, in the transmission of information orally from Staff Sergeant Allan to Police Constable Gander and again orally from him to the Society, an error or misunderstanding arose. Mrs. Saul and Mrs. Dick understood that the call to the Force had been anonymous. They did not understand that Dr. Jumean had made the call to the Force.

Having reported to the Society, Police Constable Gander accompanied Mrs. Saul and Mrs. Hoad to find and examine Kim. Effectively, he relied upon their assessment of Kim's physical condition and their determination that there were not then grounds to justify her removal by the Society.

In my view, Police Constable Gander's reliance upon that assessment and determination at that particular time was appropriate. The responsibility for Kim's protection at that time lay primarily upon the Society.

Police Constable Gander rendered any assistance required by Mrs. Saul and Mrs. Hoad on June 17, 1975. He prevented Jennifer Popen from removing Kim before the Society's workers had satisfied themselves as to the circumstances then existing.

Police Constable Gander relied upon Mrs. Saul's statement to him that she would advise the Force of observations made by Society's personnel who were to visit the Popen home within the following week. Mrs. Saul denied having made the statement, but, as outlined in Chapter VI of the Report, I prefer Police Constable Gander's testimony to that of Mrs. Saul in this area.

On July 2, 1975 he telephoned Mrs. Saul and learned that Kim's case had been assigned to Mr. Carter.

On June 18, 1975, Mrs. Kuly of The Lambton Health Unit had telephoned the Force for some information about Kim. Staff Sergeant Allan advised her of Police Constable Gander's comments as recorded in the Force's Investigation Report and that the matter now lay with the Society.

The Force's Investigation Report contains no mention of that telephone conversation with Mrs. Kuly.

The Force did nothing further and had no involvement with Kim until August 31, 1975.

I am critical of the Force for not having undertaken any investigation to determine whether or not there had been any breach of the Criminal Code or of any other legislation such as the Act. I appreciate that Kim's protection was primarily the responsibility of the Society who had a duty to provide and ensure that protection.

To say that the prime responsibility for Kim's protection lay with the Society does not excuse the Force of its duty to investigate the report of other offences. Included in the list of alleged offences mentioned by Dr. Jumean were Annals Popen's assaults upon Jennifer Popen and Jennifer Popen's assaults upon Kim. Those latter alleged assaults, if investigation supported the validity of the information, would have justified prosecution of Annals Popen and Jennifer Popen other than under section 40 of the Act.

The full extent of the Force's investigation of the matters mentioned by Dr. Jumean was Police Constable Gander's visit with Mrs. Saul and Mrs. Hoad to see Kim on June 17, 1975 and his telephone call to Mrs. Saul on July 2, 1975.

That was not an investigation in any real sense. No effort was made to ascertain the circumstances surrounding Kim's hospitalization with a broken arm or the incident of the black eye. No effort was made to inquire of Dr. Jumean as to his observations on any occasion. No effort was made to resolve the apparent discrepancy between Dr. Jumean's report of severe bruises on Kim on June 16, 1975 and the inability of Mrs. Saul and Mrs. Hoad to see any bruises on Kim on June 17, 1975. The discrepancy was explained to my satisfaction upon the Inquiry. As I have noted in Chapter VI of the Report, Dr. Jumean saw Kim on June 6, 1975, not on June 16, 1976, and in that period of eleven days from June 6 to June 17, 1975, the bruises had healed and were not so visibly apparent.

By failing to conduct a full and proper investigation of all of the elements of Dr. Jumean's report the Force failed Kim.

A motto of police forces in Ontario is centred on their duty and willingness to serve and to protect.

Kim needed the service and protection of the Force. That would have been inherent in such an investigation. She did not receive it.

Kim in June, 1975 was five months old, a helpless defenceless child. Upon the basis of the testimony upon the Inquiry as to the information which the Force would have found in June, 1975 had an appropriate investigation been undertaken, I am satisfied that in June, 1975 sufficient evidence was available to merit an application to the Provincial Court (Family Division) to declare Kim to be a child in need of protection. No one now can say what result might have come from such an application. One result might very well have been the prevention of the ultimate tragedy.

Kim needed the protection that a proper investigation by the Force would have offered to her. She did not receive it.

On August 31, 1975, a somewhat different situation developed. Kim was in hospital. She had suffered injuries. Medical personnel were concerned for her safety.

This time a member of the Force responded promptly to the call from the hospital for assistance. He was not a member of the Morality Office of the Force, but he attended to provide police service and protection until a member of that office was able to respond.

This time Police Constable Wyville, a member of the Force, promptly notified the Society of the situation and the Force provided assistance to Mrs. Dick of the Society when she attended there.

This time Police Constable Wyville and other members of the Force did undertake an investigation because of what was observed and learned at the hospital on August 31, 1975.

As a result of that investigation and after consultation with the Crown Attorney, Police Constable Wyville, on October 16, 1975, swore on information alleging that Annals Popen and Jennifer Popen, contrary to section 40 of the Act, had failed to protect Kim during the period from January 11, 1975, the date of her birth, until August 31, 1975.

In Chapter VI of the Report I have reviewed the testimony given upon the Inquiry as to the consultations between members of the Force and the Crown Attorney. I have concluded that the Force was well advised to proceed under the Act rather than by way of a charge, perhaps of assault causing bodily harm, under the Criminal Code.

Having said that, I add that the extent and quality of the investigation conducted by members of the Force and the preparation for trial were not satisfactory.

So that readers of the Report might better understand my comments and the reasons for them, a copy of the Force's Investigation Report is reproduced as Schedule 2-O to the Report. Henceforth in this chapter I shall sometimes call the Force's Investigation Report merely the "Investigation Report".

The Investigation Report is composed of ten paragraphs on about one page of paper typewritten for Staff Sergeant Allan and Police Constable Gander. Two of those paragraphs recount the information given by Dr. Jumean by telephone on June 16, 1975. Seven recount Police Gander's actions and information gained therefrom on June 17, 1975. The tenth recounts Police Constable Gander's telephone call of July 2, 1975.

On less than one page, in eight brief paragraphs, Police Constable Wyville recorded the actions of himself and other members of the Force on August 31, 1975. The last of those paragraphs was simply a statement that Police Constable Wyville advised Annals Popen and Jennifer Popen that an investigation would be held and charges might be laid.

The Investigation Report does not disclose any further action by Police Constable Wyville or any other member of the Force. Upon the testimony given during the Inquiry, I am satisfied that members of the Force did various things after August 31, 1975 in purported investigation of Kim's injuries. They did not follow the procedure which Staff Sergeant Allan said existed whereby the Investigation Report became an ongoing document with each development in the investigation being recorded by the officer involved.

The reason for such a procedure is apparent. It enables supervisory officers of the Force to ascertain quickly and concisely the state of any investigation at any time. It is a convenient summary of information and saves the supervisory officers the task of reading the note books of all officers each time the case is reviewed either for police purposes or to respond to questions from other sources. An instance of the latter was the telephone call from Mrs. Kuly of The Lambton Health Unit to Staff Sergeant Allan on June 18, 1975. So far as the written record of the investigation is concerned, if Mrs. Kuly had telephoned at any time after August 31, 1975 Staff Sergent Allan would not have been able to tell her anything more than he had on June 18, apart from Police Constable Gander's telephone call of July 2, 1975 and the events of August 31, 1975 all of which, as recorded, occurred at the hospital.

The procedure of updating the Investigation Report enables supervisory officers of the Force to have a recorded base of information to serve as a basis for directions to junior officers engaged in various aspects of the case. It makes easier the task of the member or members of the Force who must prepare instructions for Crown Counsel prior to any hearing or trial. Hereafter I will sometimes call such instructions the "Crown Brief."

For the assistance of readers of this Report, a copy of the Crown Brief in connection with the charge under the Act laid against Annals Popen and Jennifer Popen is reproduced as Schedule 2-D to the Report.

Police Constable Wyville was the member of the Force who was regarded as being the investigating officer. As he testified he referred to what he called his "investigation notes." He said that his involvement with Kim's case began with the call from the hospital to the Force at about 3:10 p.m. on August 31, 1975. He was not certain that he was then made aware of the Investigation Report begun by Staff Sergeant Allan on June 16, 1975 and continued by Police Constable Gander on June 17 and July 5, 1975. Certainly he saw the Investigation Report when he added to it paragraphs numbered 11 to 18, inclusive, outlining events of August 31, 1975.

On August 31, 1975, Police Constable Wyville arrived at the hospital shortly after Police Constable Kennedy who remained, but who had only a minor involvement. Police Constable Kennedy had been dispatched to "cover" until a member of the Force's Morality Office was available.

That was an appropriate assignment. A police officer was in prompt attendance at a situation in which medical personnel at the hospital were concerned for Kim's safety in the presence of her parents, one of whom wished to remove her from hospital. The medical personnel requested and received prompt service and protection by the Force for Kim and themselves.

Police Constable Kennedy had seen Kim and her injuries. He said those injuries were shown in the photographs taken later that day by Police Constable Turner. Police Constable Kennedy said that what he had seen of Kim's injuries satisfied him that she was "badly battered" and that her injuries were caused deliberatly, not accidentally. Police Constable Kennedy had remained with Police Constable Wyville for a short time, especially while Police Constable Wyville interviewed Jennifer Popen. Police Constable Kennedy made no notes of the incident and, as he said, he was "hazy" as to what had occurred and who were present. He was unable to recall even the day of the week on which these events occurred. In his testimony upon the Inquiry, he said he had then told Police Constable Wyville of his own visual and aural observations.

Police Constable Kennedy's involvement was so minor in the eyes of Police Constable Wyville that on October 23, 1975, when Police Constable Wyville prepared the Crown Brief he did not mention Police Constable Kennedy.

In my view, regardless of the seemingly minor role he played, Police Constable Kennedy should have kept some notes of the occurrence. If nothing else he was present at a discussion between the investigating officer and Jennifer Popen who, if not immediately a subject of investigation, would likely soon be such a subject.

The absence of notes seemed to be symptomatic of the approach of the Force to the investigation. They seemed to approach it as a minor matter which did not merit the careful investigation and preparation for trial which would be entailed in cases which they regarded as being more serious. I will make reference to some of the oral testimony given upon the Inquiry which supports my view.

Police Constable Wyville was asked to describe the investigative procedures he undertook. He told of having spoken with Mrs. Hewitt, a nurse, on August 31, 1975 at the hospital. She permitted him to see Kim. She said that doctors felt Kim was an abused child. Mrs. Hewitt told him of Kim's admission to hospital "the evening before that," but he made no notation of the time she mentioned as the time of admission.

Hospital records and other evidence upon the Inquiry show that Kim was presented at the hospital and admitted at about 1:25 a.m. in the very early hours of that day. That is hardly "the evening before." Absence of records of details of that nature from police reports is an indication that the Force did not, at least inititally, regard Kim's case as one meritting careful and meticulous investigation and preparation of records thereof for police files and possible proceedings in Court.

Police Constable Wyville did speak with Dr. Thorp and Dr. Singh while at the hospital. He was told by them that they felt Kim was "a misused or battered child or both."

Police Constable Wyville said that the injuries he saw on Kim were as shown in the photographs taken by Police Constable Turner.

Police Constable Wyville testified that he had spoken with Annals Popen and Jennifer Popen at the hospital, but it was a rather fruitless effort. Annals Popen was not communicative except to the extent to which Jennifer Popen permitted him to be. Jennifer Popen attributed Kim's injuries to Kim's own activity and falls from her crib and dresser drawers. Jennifer Popen was hostile, resentful and uncooperative. None of that is recorded in the Investigation Report or in the Crown Brief.

Police Constable Wyville testified that Mrs. Hewitt had been concerned about Jennifer Popen's attempts to remove Kim from the hospital before the arrival of any member of the Force. That is not recorded in the Investigation Report or in the Crown Brief.

On the basis of the testimony of skilled and experienced social workers who appeared as witnesses upon the Inquiry, I am satisfied that information as to the conduct and attitude of parents in the face of injury to their child and as to the remarks made by them in explanation of the child's injuries, is of importance in the investigation and ongoing management of cases of child abuse. That is particularly so when, as in Kim's case, on the basis of expert medical testimony, those explanations are not reasonable when considered in the light of the nature and extent of the injuries suffered by the child. They are not consistent with the nature and extent of the injuries.

I am satisifed that information of that sort, while it might not be admissible in a prosecution under the Criminal Code alleging that one or both of the parents had assaulted the child, would be of assistance to a provincial judge sitting in provincial court (family division) upon an application for an order declaring the child to be a child in need of protection under the Act.

Even if the Force was not directly involved in the application by the Society in the Provincial Court (Family Division) of the County of Lambton for such an order, the Force, in performance of its duties as set forth in section 55 of The Police Act, should have recorded that information so that it would be available if a member of the Force was called upon by the Society for information or was subpoenaed as a witness upon the application.

As I have mentioned in other chapters of the Report, I am aware that the Society was insular and did not initiate and maintain contact with other institutions and agencies in the community, including the Force. However, if someone from the Society had telephoned the Force for information, as Mrs. Kuly of The Lambton Health Unit had done on June 18, 1975, and, like she, had had to rely solely on the information which any member of the Force would have had available for the appropriate disclosure from the written records of the Force, that information, valuable to the Society to support its application, could not have been given because it was not recorded.

I recognize that if the person from the Society were persistent or aggressive and went beyond the written records of the Force and spoke directly with Police Constable Wyville he might have remembered this information or have had a note of it somewhere. He did testify that at the hospital on August 31, 1975, he told Mrs. Dick of his "brief involvement at that time" and explained the difficulty he had encountered in talking with Annals Popen and Jennifer Popen. He said that as a result of that, Mrs. Dick, with Dr. Singh and perhaps Dr. Thorp, interviewed Kim's parents. His uncertainty as to Dr. Thorp's involvement was another instance of the frailty of Police Constable Wyville's memory and his lack of adequate notes.

I recognize as well that the Society bears the prime responsibility for the preparation and presentation of an application for an Order declaring a child to be a child in need of protection under the Act. However, that does not relieve the Force of its duties under The Police Act.

Under section 55 of The Police Act, members of the Force

> "are charged with the duty of preserving the peace, preventing...crimes and offences ...apprehending offenders, and laying informations before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders..."

The Force was responsible for the investigation of the circumstances surrounding all of Kim's injuries and, if the results of that investigation warranted it, the prosecution of anyone who caused those injuries or, by failing to protect her, permitted her to suffer those injuries.

As required by The Police Act the Force assumed those responsibilities. But having assumed them, the Force did not adequately fulfill its obligations or perform its duties.

On the basis of the testimony presented upon the Inquiry, there were various incidents of Kim's hospitalization, illness, injury and alleged injury which occurred prior to August 31, 1975. All of those incidents should have been investigated by the Force.

The first incident was Kim's hospitalization on March 22, 1975 when her major injury was the severe fracture of her left humerus.

As I have noted earlier in this chapter, that incident should have been investigated in June, 1975, but was not. The Investigation Report is silent as to what investigative steps were taken after August 31, 1975. The Crown Brief is not very informative. It says in effect only that "further investigation" revealed Kim's medical history, including "admitted to St. Joseph's Hospital with a fractured left arm on March 22, 1975."

I presume the reference to "further investigation" means that Police Constable Wyville did something and learned something after talking with "doctors and nurses" at the hospital on August 31, 1975, but the Crown Brief does not indicate what he did or when he did it.

The Crown Brief goes on to say that Mr. Carter of the Society can "give past history and involvement with the Popens." An examination of Mr. Carter's testimony upon the Inquiry shows how limited such testimony would have been. Mr. Carter's involvement with Kim's family was minimal when the Crown Brief was prepared on October 23, 1975 and even that involvement was subsequent to August 31, 1975. That was hardly "past history and involvement."

The Crown Brief continues with the notation that Mrs. Hewitt saw the marks on Kim on August 31, 1975 and had seen similar marks on her in the past. There is no explanation of the meaning of the words "in the past". If they related to the March 22, 1975 incident, the Crown Brief would seem to be in error because in all of her testimony upon the Inquiry, Mrs. Hewitt did not say that on March 22, 1975 she saw any marks on Kim, let alone marks similar to those which were on her body on August 31, 1975.

She testified that she had interviewed Jennifer Popen on March 22, 1975 when Kim was admitted to hospital. She said that Jennifer Popen gave a number of conflicting explanations for Kim's injuries. The Crown Brief does not mention that.

I have already written about the significance of evidence as to the behaviour and attitude of parents and the explanations they give for any injuries to their child.

The Crown Brief mentions Dr. Singh and his testimony. Most of the notation in the Crown Brief is a recital of the nature of Kim's injuries on March 27, 1975 and August 31, 1975. There is no mention that Dr. Singh had spoken with Jennifer Popen in March, 1975 and she had given to him an explanation for Kim's injury, but the explanation did not correspond to or "was not compatible with" the nature of Kim's injury. The nature of the injury and the inadequate explanation for it formed the basis for Dr. Singh's suspicion that Kim had been abused in March, 1975. The notation concludes with Dr. Singh's opinion, expressed in the present tense that Kim is "battered." By the use of the present tense that opinion does not relate to the March incident.

While the Crown Brief indicates that Dr. Singh examined Kim on March 27, 1975, that is not correct. He examined her on March 26, 1975. His typewritten report upon that examination is dated March 27, 1975. In that typewritten report he wrote of his suspicion of child abuse and the basis for the suspicion. He also prophesied that if Kim were not protected "she might end up with a fractured skull." That prophecy is not mentioned in the Crown Brief.

The Crown Brief mentioned Dr. Jumean. His testimony was expected to relate to his examination of Kim on June 16, 1975 and to two events during the preceding six weeks. It was not related to the injury of March 22, 1975. Dr. Jumean's testimony upon the Inquiry showed he had not seen or attended Kim during her hospitalization in March, 1975.

Thus the Crown Brief contained little information about Kim's hospitalization in March, 1975 and the serious concern it caused to Dr. Singh who suspected that Kim was, even in March, 1975, a victim of abuse and in danger of a recurrence of abuse.

The Crown Brief continued Kim's "medical history" with the notation that she was "admitted again with black eyes on April 22, 1975." The only other reference in the Crown Brief to black eyes or black eye is in the summary of Dr. Jumean's testimony as expected by Police Constable Wyville. In that summary there is a reference to Dr. Jumean's having seen Kim with a black eye when he examined her at hospital for a respiratory ailment about three weeks prior to June 16, 1975. April 22, 1975 is certainly much earlier than "about three weeks" prior to June 16, 1975.

The evidence upon the Inquiry was that Dr. Jumean admitted Kim to hospital on April 28, 1975 because of a respiratory infection. Upon the Inquiry, after he had confirmed that he had admitted Kim to hospital at that time he was asked the following question and made the following response:

> "Q. All right. Now, did you make any observation at that time of child abuse or any external signs of it in April of 1975?

A. No, sir."

None of the documents relating to the April, 1975 admission to hospital mention that a black eye or black eyes had been noted at that time.

The Crown Brief is in error as to the date of Kim's admission to hospital in April, 1975 and as to the presence of black eyes when admitted.

The Crown Brief is substantially correct, so far as it goes, with reference to the injuries discovered on August 31, 1975 when Kim was admitted to hospital. But it is not complete. It makes no mention of the discovery, by X-ray, of fractures of ribs suffered by Kim some weeks earlier, between her admissions to hospital in March, 1975 and August, 1975.

Another deficiency in the Crown Brief is the absence of any reference to an incident mentioned by Mrs. Hewitt in her testimony upon the Inquiry. She spoke of having seen Kim, with Jennifer Popen, in a shopping mall in Sarnia at some time, perhaps in June, July or August, 1975. She said that Kim had black eyes then and she spoke of Jennifer Popen's rather brash behaviour.

The Crown Brief is inaccurate in two ways. It is inaccurate in some of its contents. It is inaccurate because of its omissions.

Police Constable Wyville testified that in his investigation on and after August 31, 1975, he spoke with Mrs. Dick and Mr. Carter of the Society, Mrs. Hewitt, Dr. Singh, Dr. Jumean, Police Constable Turner, Police Constable Kennedy and Miss Jean Cappa who was in charge of hospital records.

There was no testimony to indicate what information he sought or received from those to whom he spoke. As I have attempted to show by my comments in this area, the Crown Brief is not very enlightening.

Upon the prosecution of Annals Popen and Jennifer Popen upon the charge under section 40 of the Act, the only evidence was the summary read by the Assistant Crown Attorney. It was essentially a recital of the Crown Brief. It was sufficient, on

Annals Popen's plea of guilty, to enable Judge Nighswander to make a finding of guilt. The Force was responsible for the assembly of the evidence to be presented by the Crown Attorney upon that trial. The Crown Attorney was entitled to rely upon the accuracy and thoroughness of the Crown Brief.

In my view, the presentation of only that limited amount of evidence was not fair to Judge Nighswander. He did not receive a complete description of Kim's circumstances. If the Force had assembled and presented, even if only by way of the Crown Brief, all of the evidence available to it by proper investigation, the testimony upon the trial before Judge Nighswander would more nearly have approximated the facts.

Even if one assumes that all of the witnesses listed in the Crown Brief had been subpoenaed and were available to testify upon the trial, it would not necessarily follow that examination of those witnesses would have elicited more information than was in the Crown Brief.

Mr. Hibberd, Assistant Crown Attorney, was asked his opinion of the Crown Brief. He described it as "average." He said that in relation to what might be expected for a trial in The Supreme Court of Ontario or The County Court of the County of Lambton, the Crown Brief was "short." That assessment is confirmatory of my previously expressed opinion that the Force, through Police Constable Wyville and whichever other members may have assisted him, approached the matter as if it were not as serious as matters that would be tried in The Supreme Court of Ontario or The County Court of the County of Lambton.

Mr. Hibberd properly declined to try to place child abuse in some position, determined by assessing the gravity of the matter, within a list of offences. On the testimony upon the Inquiry and the expressions used by witnesses, child abuse must be regarded as a serious matter. It is not necessary to try to relate its gravity to the gravity of any other offence.

One must wonder why Police Constable Wyville did not interview other people, such as Mr. Khattab, the hospital's social worker.

In March, 1975 Dr. Singh had asked Mr. Khattab to investigate the background of Kim's family. That was recorded in Kim's files in the hospital and in Dr. Jumean's office. An interview with Mr. Khattab would be necessary before Police Constable Wyville could regard his investigation as complete. I am not to be understood to say that what Mr. Khattab could tell Police Constable Wyville would be particularly helpful. I have assessed Mr. Khattab's performance of his duties elsewhere. However he had spoken to Jennifer Popen and he may have received some information. Police Constable Wyville could not get even that without speaking to Mr. Khattab.

There was no evidence to indicate that Police Constable Wyville was aware of Mr. Khattab's involvement in the case. There was no evidence to suggest that Police Constable Wyville had seen Kim's files or had even asked to see them.

In testimony upon the Inquiry, witnesses spoke of explanations for injuries which were not compatible with the injuries. They said that that might be an indication that the injured child had been abused. Without speaking with Mr. Khattab Police Constable Wyville could not have learned of the explanations given by Jennifer Popen to Mr. Khattab. The witnesses spoke of explanations given which were not consistent with other explanations given by the same person for the same injury. Without knowledge of the explanations given to Mr. Khattab, no one could determine if they were reasonable or if they were consistent with the injuries which Kim had suffered.

Police Constable Wyville did not interview Dr. Thorp who had examined Kim on each of her admissions to hospital in March and August, 1975.

Police Constable Wyville did not interview Dr. McCrudden, the radiologist, who had, by X-Ray, discovered the presence of rib fractures suffered some weeks prior to August 31, 1975. An interview with Dr. McCrudden or some other radiologist would be essential to a complete investigation. If nothing else it would have revealed the evidence of rib fractures.

Nothing in the testimony upon the Inquiry indicates that Police Constable Wyville or any member of the Force was, at any time prior to Kim's death, aware of all of the injuries she suffered between her birth and August 31, 1975. Evidence in respect of those injuries was available in February and March, 1976, and even in September and October, 1975, if a complete investigation had been conducted by the Force.

The Force did not conduct a thorough and complete investigation of the injuries suffered by Kim on or before August 31, 1975. The Force failed in its duty. It neither served nor protected Kim.

In Chapter XIV of the Report, in which I review Mabel Harvey's role in Kim's life, I comment upon the scanty evidence presented in support of the Society's application on February 25, 1976. Essentially it was a repetition of the summary of evidence upon the earlier trial resulting from the charge under section 40 of the Act.

Police Constable Wyville testified very briefly as to his observations at the hospital on August 31, 1975. In cross-examination he mentioned two explanations for Kim's injuries which Jennifer Popen had given to him. Police Constable Turner testified as to photographs he had taken showing Kim's injuries. Miss Cappa testified as to records of the dates of Kim's admissions to or treatment in hospital and the nature of the illness or injury.

Dr. Singh testified as to his observations of Kim in March, 1975 and the explanation given to him that Kim's injury occurred while Jennifer Popen was changing Kim's clothing. In cross-examination Dr. Singh testified as to his observations of Kim on and about August 31, 1975. He said Kim's activities as related to him by Jennifer Popen were "a little unusual".

Mrs. Hewitt testified as to Kim's injuries which she saw on August 31, 1975 and her opinion that they had not been caused in the manner related by Jennifer Popen. Mrs. Dick testified as to her actions at the hospital on August 31, 1975 when Kim was taken into the care of the Society. Mrs. Kirby testified as to Kim's care by the Society after August 31, 1975.

Jennifer Popen was called upon by Judge Nighswander and gave some confused and confusing testimony as to Kim's injuries in March and August, 1975 and their causes.

There was no testimony that any of those witnesses had been interviewed by anyone in preparation for the trial or the hearing. In connection with the trial of the charge under section 40 of the Act the Force and Crown Attorney would be responsible for the preparation for trial. The Force did not properly prepare for trial and did not prepare a complete Crown Brief to enable the Crown Attorney to present a complete description of the circumstances surrounding Kim's care by her parents and her injuries. The description was sufficient to support a finding of guilt following Annals Popen's plea of guilty. It was not sufficient to provide adequate information to assist Judge Nighswander in his consideration of what should flow from the finding of guilt.

The inadequacy of the Crown Brief placed Mr. Lang at a disadvantage in determining whether or not to proceed as Mr. Higgins had suggested. Mr. Lang reached his decision on incomplete information.

Another indication of the lack of importance given to Kim's case by the Force is the testimony of Mr. Lang and members of the Force as to the actions of members of the Force after Mr. Lang advised the Force of Mr. Higgins' letter of February 10, 1976 and subsequent conversations. In brief Mr. Higgins had suggested that Annals Popen would plead guilty and had requested Mr. Lang to withdraw the charge against Jennifer Popen.

Mr. Lang quite correctly did not enter into any arrangement with Mr. Higgins before inquiring as to the opinion of the Force as represented by Staff Sergeant Allan. In addition Mr. Lang requested Staff Sergeant Allan to ascertain the view of the Society as to the suggested disposition of the charge under section 40 of the Act.

The members of the Force who testified indicated that they had been satisfied by the proposal. Unfortunately Police Constable Wyville, in his testimony, said that one of the factors which had influenced his decision to tell Staff Sergeant Allan that he was satisfied was his belief that, if Annals Popen were found guilty, it would be virtually impossible to obtain a finding of guilt against Jennifer Popen if she maintained a plea of not guilty. Police Constable Wyville apparently had forgotten the discussions with Mr. Lang which had resulted in the charge being laid under section 40 of the Act rather than under the Criminal Code. The determining factor in those discussions had been that upon a charge under section 40 of the Act, unlike a charge under the Criminal Code, the identity of the person or persons who actually and directly caused Kim's injuries did not have to be proven.

Thus Police Constable Wyville was in error when he permitted himself to consent to Mr. Higgins' suggestion because of any anticipated difficulty in obtaining a finding of guilt against both Annals Popen and Jennifer Popen. The whole purpose of proceeding under section 40 of the Act was to remove that difficulty. The critical element of the offence as charged was failure to protect Kim. In my opinion Annals Popen's plea of guilty, even if accepted by the Court, would not prevent the Court from finding Jennifer Popen to be guilty. Nor would it make it more difficult for the Court to find Jennifer Popen to be guilty.

Staff Sergeant Allan had no record or recollection of the conversations with Mr. Lang nor of anything he had done as a result of it. He was prepared to accept Mr. Lang's recollection of the conversations. I have, elsewhere in the Report, stated that I have accepted Mr. Lang's testimony and made findings as a result.

Staff Sergeant Allan had no record or recollection of having made any inquiry, either personally or by some member of the Force, as to the view of the Children's Aid Society as to Mr. Higgins' proposal. Police Constable Wyville, who would most likely have been ordered by Staff Sergeant Allan to make any such inquiry of the Children's Aid Society, had no record or recollection of having received any such order or of having made any such inquiry of the Children's Aid Society.

There was no evidence upon the Inquiry to suggest that the Force kept any record, even if only in the note book of any officer, of any such conversation with Mr. Lang or with anyone at the Society. There was no mention of it in the Investigation Report.

In my opinion the Force would be well advised to institute practices and procedures to ensure that in some appropriate place, probably in one or both of the Investigation Report and the Crown Brief, a record be made of such conversations to indicate the parties thereto and the specific result thereof.

What occurred during the Inquiry was unfortunate and came about largely because of the failure of the Force to maintain appropriate records as to the discussions of its members with the Crown Attorney and others interested in the disposition of the case. By reason of that failure by the Force to maintain complete records, I was forced to rely upon other evidence, less direct than what should have been available from the Force's files, to satisfy myself as to the Society's awareness, prior to February 23, 1976, that, upon Annals Popen's pleading guilty and being found guilty, the charge against Jennifer Popen would be withdrawn.

It was about the time of those conversations that Police Constable Wyville, with Police Constable Charlton, visited the Society. While he had no record of it, he did have some memory of the visit, including the eventual gathering in Mrs. Harvey's office. His memory was not complete and he did not remember the event in any particular detail. He could not even remember the remarks attributed to him which had so impressed others and which had proven to be eerily prophetic in predicting that Kim would die within three months of her being returned to her parents' home.

By failing to conduct a thorough and complete investigation of all of the injuries suffered or reportedly suffered by Kim on or before August 31, 1975, the Force failed Kim.

That failure contributed to the fulfillment of Police Constable Wyville's prediction of her death and Dr. Singh's earlier prediction as to the nature and severity of injuries she might suffer if proper steps to protect her were not taken in March, 1975 and in the following months. In saying that I know that the Force was not, until June 16, 1975, aware of any injury that Kim suffered, my finding of failure by the Force relates only to the period commencing with Dr. Jumean's telephone call to the Force on June 16, 1975.

I have given to Chapter XI of the Report the caption "Postlude to Kim's death on August 11, 1976."

The Force was involved in the events described in that Chapter.

As I have written in that Chapter, those events are not within the mandate of the Order of the Minister of Community and Social Affairs appointing me to conduct this Inquiry, but I wish to comment upon them in this Chapter as being a manifestation of the failure of the Force to recognize and act upon incidents which might result in child abuse.

On August 11, 1976 the Force learned of Kim's death. Inspector Donald W. Ross and Staff Sergeant Lyle J. Waters began an investigation into her death. By visiting the family home they learned that the month old male child, Karie, remained there with Annals Popen and Jennifer Popen.

On August 12, 1976 the police officers spoke to Mrs. Harvey and Mrs. Lo of the Society who would not remove Karie from the home because, in their opinion, there was no evidence that he was a child in need of protection under the provisions of the Act. Their view was that the fact that Kim had been grossly abused did not justify the removal of Karie from the family home.

Inspector Ross did pursue the issue but only to the extent that he spoke about it to Dr. McKinlay, a coroner, and to Mr. Lang in the morning of August 13, 1976, the second day after Kim's death and the day after Mrs. Harvey and Mrs. Lo had declined to remove Karie.

In his testimony upon the Inquiry, Inspector Ross acknowledged that he did not fully understand the children's aid system. He said that he and Staff Sergeant Waters had expressed to Mrs. Harvey and Mrs. Lo the opinion that, because of the nature of Kim's injuries, Karie should be removed from the home. As he testified, he and Staff Sergeant Waters were of the opinion that

> "we couldn't take a chance and leave [Karie] there; [he] had to be taken out of there somehow."

During the afternoon of August 13, 1976, Inspector Ross and Staff Sergeant Waters went to the Popen home. Karie was there with Annals Popen and Jennifer Popen; Mrs. Harvey and another of the Society's workers arrived with two uniformed members of the Force. They did then remove Karie from the home.

Upon the Inquiry, Inspector Ross was asked why he himself had not removed Karie in the first instance. His reply was

> "I felt that the attitude of the Children's Aid I did not have the authority to do so and further I did not have any facility for looking after the child."

That was followed by these questions to and responses by Inspector Ross:

> "Q. Well, what had the failing or the attitude of the Children's Aid got to do with you removing the child?
>
> A. They're much better versed in these matters that I am, I would think.
>
> Q. It comes down to this, Inspector, doesn't it, that you were prepared to leave that decision up to the Children's Aid Society?
>
> A. Yes, sir."

Inspector Ross testified that there was no procedure in the Force to apprehend or remove from his or her home any child whom a member of the Force might deem to be a child in need of protection under the Act. He said the Force "would call in the Children's Aid and stand by until they arrived."

Inspector Ross acknowledged that, in the case of Karie, he "bowed to" the decision of Mrs. Harvey and Mrs. Lo. He said he was aware that the force had the authority, if it felt it appropriate to exercise it to remove Karie. He said it was an authority which was not often exercised.

I am sympathetic to the practical difficulties which would confront any police force which apprehended any child, particularly one as young as Karie was in August, 1976. Mr. Bruce Heath, a member of the Farina Committee, spoke of instances in his experience where members of a police force removed children from their homes as children in need of protection under the Act and then placed them with the appropriate children's aid society. In my view that would have been an appropriate procedure for Inspector Ross and Staff Sergeant Waters to have followed on August 12, 1976.

Even if the Society had refused to receive Karie physically, I am confident that the Force could have arranged in some way for his immediate care pending an application on short notice to the Provincial Court (Family Division) of the County of Lambton for an order declaring him to be a child in need of protection and placing him in the care of the Society. All of that is contemplated by the provisions of section 21 of the Act.

It was perhaps that same sort of attitude by the Force, as represented then by Police Constable Wyville, which brought about on February 19, 1976 expressions of concern for Kim's safety in her own home, but did not lead to any action by the Force to forestall the perceived disaster. On that day and subsequently the Force did nothing to reverse to the decision of Mrs. Harvey and took no steps then or later to prevent the Society from returning Kim to her parents' home as it did on May 27, 1976.

Notwithstanding my criticism of members of the Force for what I perceive to be a failure to assert the authority given to them by section 21 of the

Act, I recognize that the removal of Karie from the Popen home on August 13, 1976 came about primarily because members of the Force were concerned for his safety and expressed those concerns to others who were able to persuade the Society to recognize those concerns and to remove Karie.

I am confident that no one now quarrels with the decision to remove Karie. The wisdom of that decision has been proven. From reading a transcript of portions of the testimony given upon Annals Popen's new trial in December, 1981, I understand that Karie has been made a ward of the Crown under the provisions of the Act and that adoption proceedings have been instituted, if not yet completed.

Both in regard to Kim and to Karie, members of the Force correctly sensed that the child was in a position of danger. Fortunately for Karie others, informed by members of the Force, intervened to cause his being taken to a place of safety. Unfortunately for Kim the members of the Force did not inform anyone other than the Society and then they "bowed" to the decision of the Society to ignore concerns which were, so tragically, valid.

Inspector Ross did speak of arrangements which the Force had instituted to exchange information in certain areas. He indicated, and I accept it as factual, that the Force was willing to share with the Society information relative to the care of children which it might obtain during investigation or otherwise. Inspector Ross acknowledged that, so far as he was aware, that applied primarily, if not exclusively, to children much older than Kim and Karie.

That testimony of Inspector Ross reinforces my criticism of the Society and its insular position within the community.

It was a sad commentary upon the state of affairs in the community which permitted the Society, primarily responsible for the protection and care of children in the community, to dismiss so cavalierly the valid concerns of members of the Force which is another institution in the community given statutory powers to protect children.

Kim was the victim.

Chapter XX

The Role of Medical Doctors

Dr. Jumean was the family doctor to the Popen family from about June 1, 1974. I gather that Dr. Jumean attended Jennifer Popen prior to, upon and subsequent to Kim's birth and attended to Kim until August 31, 1975 and perhaps after May 27, 1976. Dr. Jumean noted nothing unusual in Kim's development or care prior to March 22, 1975.

Dr. Jumean was absent when Kim was admitted to hospital on March 22 and on August 31, 1975 with injuries which are described elsewhere and which were inflicted by Jennifer Popen.

On each of those two occasions Dr. Thorp was "covering for" Dr. Jumean, Dr. Singh was consulted and Dr. McCrudden examined X-rays of various parts of Kim's body.

In the sections of the Report setting forth a somewhat chronological review of Kim's life as revealed upon the Inquiry, I have dealt generally with the various incidents in her life in which these medical doctors were involved.

Kim remained in hospital for about 12 days following her admission on March 22, 1975.

On their own testimony and the various documents produced upon the Inquiry I am satisfied that on Kim's admittance to hospital on March 22, 1975 both Dr. Thorp and Dr. Singh had some concern or suspicion that she might have been the victim of abuse. That concern or suspicion was reflected in the consultation form addressed to Dr. Singh, nominally over the signature of Dr. Lota, but really initiated by Dr. Thorp who had called Dr. Singh, and subsequently/in Dr. Singh's report upon that consultation.

In the history forming part of that documentation of Kim's admission to hospital, Dr. Thorp wrote of the injury which was apparent on March 22, 1975 and of examination for other bruises. Two small bruises were found on the left lower chin. He also wrote that there were "no signs of cigarette burns." He mentioned that Mrs. Hewitt, head nurse, had noted Kim's resentment to having her legs lifted and that further X-rays would be taken. To my mind that clearly indicated Dr. Thorp's concern and suspicion that Kim may have been abused even though he did not specifically use any word such as "abuse" or "battered."

In the request for consultation dated March 25, 1975, Dr. Lota wrote:

> "?Batter (sic) baby syndrome..."

Upon the same form, apparently on March 26, 1975 Dr. Singh wrote under his heading:

> "Impressions," ".....(3)? battered child syndrome" and under his heading "suggest," "...(4) Ask social service worker to look into this family environment."

On March 27, 1975, Dr. Singh prepared a typewritten report upon that consultation. In part it read as follows:

> "It is extremely unusual to break a solid, long bone such as the left humerus, on just by changing the child's hand (sic). This family should be investigated by first, a service worker for the environmental and social status the family lives in. I would strongly suspect that the battered child syndrome is present and if we do not protect this child at the present state, she might end up with a fractured skull or some other fractures later on in her life. I think this should, of course, be discussed and kept confidential."

Copies of Dr. Thorp's "history" and Dr. Singh's consultation report were made specifically for Dr. Jumean. Dr. Jumean would also have access to the hospital files and records containing handwritten forms. A copy of Dr. Singh's report was made for Dr. Lota. I am satisfied that those copies were delivered to Dr. Jumean and Dr. Lota or to their office and were also placed in the hospital files and records relating to Kim. Those files and records were available to Dr. Jumean and Dr. Lota.

There was ample basis for that concern and suspicion. In support of that finding, I need mention only the nature of the injury, Kim's age and development at the time and the explanation or explanations therefor given by Jennifer Popen and the obvious inconsistencies therein and Jennifer Popen's nervous and apprehensive behaviour when responding to Dr. Thorp's questions.

Neither Dr. Thorp nor Dr. Singh made any report upon his or their suspicions or Kim's injuries to a children's aid society or Crown attorney.

Dr. Thorp testified that he was familiar with the provisions of section 41 of The Child Welfare Act. Hereafter in this chapter I shall call The Child Welfare Act the "Act."

I gathered from his oral testimony that he had some fear that if he were to make a report such as that required by section 41(1) of the Act he might, notwithstanding section 41(2), be sued, "by the patient's mother or the patient" in the event his "allegation" were incorrect.

Dr. Thorp's testimony was that he felt a report such as that required by section 41 of the Act should be made if the person making it "has reasonable suspicion." He said that meant that before making such a report the informant should "have followed up the background of the parents a bit." He had not made any such "follow up."

I share Dr. Thorp's view that any report made in compliance or in purported compliance with section 41 of the Act should be based on reasonable suspicion. In the words of the statute there must be "reasonable and probable cause."

I do not share his view that no such report should be made until the informant has conducted some investigation, except of course whatever may be appropriate to support the existence of "reasonable and probable cause" for having made the report.

In my view, Dr. Thorp with his training and experience as a medical doctor and with his knowledge of the particular injury which led to Kim's hospitalization and his observation of Jennifer Popen's explanations for that injury and her nervous and apprehensive state would have been justified in making and was required to make a report pursuant to section 41 of the Act on March 22, 1975. That he did not make such a report was a breach of the statute.

I gathered that he felt that he had done all that was required of him by placing material in the hospital records and preparing a copy of the "history" for Dr. Jumean. That was not sufficient to comply with the requirements of section 41 of the Act.

I appreciate that my view is a legalistic one and the apparent harshness thereof must be mitigated by recognition of the circumstances that prevailed. Dr. Thorp merely admitted Kim to hospital through emergency procedures in the absence of Dr. Jumean and Dr. Lota who, to use Dr. Thorp's expression, was Dr. Jumean's *locum tenens*; he initiated Dr. Singh's involvement; he arranged for Kim to receive appropriate treatment for her injury and he prepared a history for Dr. Jumean which, in my view, clearly indicated his concerns and suspicions that Kim had been abused. Admittedly the written history did not contain as much detail as to his suspicion and concern and the basis therefor as did his oral testimony upon the Inquiry. But coupled with oral discussion which took place amongst the doctors it was adequate.

Dr. Lota recognized Dr. Thorp's concerns when, in preparing the formal request for Dr. Singh's consultation, she wrote, on March 25, 1975,

"?Batter (sic) baby syndrome."

Had Dr. Jumean read Dr. Thorp's "history" he too would have recognized Dr. Thorp's concern.

I am satisfied that while Dr. Thorp did not comply with the provisions of the statute that failure was of minimal at most and probably, by reason of subsequent intervening events, was of no significance in the development of the ultimate tragedy.

In my view Dr. Singh would have been justified in making and required to make a report pursuant to section 41 of the Act.

Probably even more so than Dr. Thorp he, by his special training and experience in paediatrics, was qualified to recognize the existence of the possibility that Kim had been abused.

Dr. Singh testified that severe force or violence would be required to cause the injury to Kim's arm and that it would be impossible for the fracture to have been caused simply by changing her clothing as Jennifer Popen had mentioned to him in her explanation of the cause of Kim's injury. He said he was aware that inconsistencies in explanations for injuries are common in cases of child abuse and that Jennifer Popen had given a number of inconsistent explanations.

From his report upon his consultation it is clear his suspicions were aroused and he recorded them in the hospital records and for Dr. Jumean and Dr. Lota who Dr. Singh believed were in partnership.

Dr. Singh testified that he asked Dr. Thorp to refer the matter to a social service worker, Mr. Khattab of the hospital's staff, for investigation of the environmental and social status of the Popen family. The consultation report refers to all of this, but does not indicate Dr. Thorp's involvement in the referral to Mr. Khattab. In any event, in some way, Mr. Khattab's services were sought and obtained. Dr. Singh testified that he had not expected to receive nor did he receive any report from Mr. Khattab who, he thought, would report to Dr. Jumean and Dr. Thorp.

Dr. Singh testified that he expected Dr. Jumean or Dr. Lota as the family physician to read the consultation report and to do whatever was necessary to implement the recommendations therein.

As to the suggestion in the consultation report that the matter "be discussed and kept confidential," Dr. Singh testified that the report was a communication from him to the family physician, that the views or opinions expressed were based on only the initial examination and were merely impressions formed therefrom rather than a final diagnosis confirmed after a full investigation. He said he did not want any suggestion of his suspicion to be leaked prematurely lest the parents remove the child from hospital. He said he did not want his suspicion to be leaked to any authority, such as the police or the Society, because it was merely a suspicion and had not been confirmed.

In my view, Dr. Singh too was in breach of section 41 of the Act in that he failed to make a report as required by that section. He had information of the physical ill-treatment of Kim. Merely to prepare and deliver a report to Dr. Jumean and Dr. Lota, with a copy for the hospital file, with reliance that the doctor receiving it would then investigate further and, if the suspicion were confirmed, make a report pursuant to the statute, is not sufficient to constitute performance of the statutory duty imposed on Dr. Singh by section 41 of the Act.

Dr. Singh testified that his view as to his duty remained unchanged after Kim's death, but added that in addition to preparing the written report to the physician he would arrange to meet the physician who referred the case to him to encourage that physician to make the report required by the statute.

In my view even that would not have fulfilled the statutory duty which lay upon Dr. Singh in March, 1975.

As I have written with reference to Dr. Thorp's position, I feel the severity of my view of Dr. Singh's failure to report the matter in March, 1975 is mitigated by the peculiar circumstances of his relationship to Kim. That relationship was limited. He did report his suspicion, but only to the family physician on whom he relied to comply with the Act. A copy was placed in the hospital file. He made certain that Kim received proper care for her physical injury. Understandably, in his oral testimony he enlarged upon his written reports, but that enlargement was available to the family physician if it were sought. It was not sought.

Again, as I said with reference to Dr. Thorp, Dr. Singh's failure to report was of minimal, if any, significance in the development of the tragedy.

During the period of Kim's hospitalization, the area of her left shoulder and humerus was examined by X-ray on March 22 and March 25, 1975. Reports thereon were prepared over the signatures of Dr. M. F. Bennett and Dr. B. E. McCrudden, respectively. Dr. Bennett and Dr. McCrudden were associated as radiologists with the hospital. Only Dr. McCrudden testified orally upon the Inquiry.

Dr. Bennett's radiological report upon the X-ray performed March 22, 1975 merely confirmed the presence of "a slightly oblique fracture of the mid-shaft of the humerus" and Dr. McCrudden's report following the X-ray performed March 25, 1975 commented upon changes in the area since the earlier X-ray.

Dr. McCrudden testified that he did not directly treat or see Kim. I presume Dr. Bennett would have testified to similar effect.

Dr. McCrudden testified that the X-ray examination was made pursuant to a request through the Emergency Department of the hospital to take X-rays of that particular portion of Kim's body because of a suspicion there was a fracture there.

I am satisfied that during March, 1975, neither Dr. Bennett nor Dr. McCrudden knew more than that Kim's left humerus had been fractured. They knew nothing of the explantions given by Jennifer Popen nor of the suspicions of Dr. Thorp, Dr. Lota and Dr. Singh and the basis for those suspicions.

In my view therefor neither Dr. Bennett nor Dr. McCrudden had information which would justify or require them, to make a report pursuant to the Act.

In vigorous cross-examination Dr. McCrudden was asked a number of theoretical questions relevant to his perception of the role of a radiologist and the effect thereon of section 41 of the Act.

The questions were premised upon the radiologist being aware that the patient who had been X-rayed was a child who had been battered or to whom the battered child syndrome applied. It was not suggested that Dr. McCrudden was aware that Kim was such a child.

As I understood Dr. McCrudden's responses they essentially placed responsibility upon the "clinician," whom I took to be the attending physician. Dr. McCrudden's response was that if he suspected the presence of child abuse he would do as he would do in the event of any other disease process -- that is, he would call the physician and discuss it and "thence it is [the physician's] responsibility."

Dr. McCrudden expressed the view that it would be unethical for him to become involved directly with a patient who was not his patient if the attending physician did nothing about the suspected abuse of the child. He felt that would "be going over the head of a physician or one of my peers and so forth." He said he had never been confronted with such a situation and that, in practice as opposed to the theoretical situation involved in the questions, he could not tell whether or not the appropriate action was taken by the attending physician.

Dr. McCrudden expressed the view that a radiologist's responsibility would end when the attending physician has been advised of the radiologist's suspicion of child abuse and the radiologist has no reason to believe that the attending physician will not take proper and appropriate action. He said he would presume that the attending physician would comply with the requirements of the statute. In his opinion the radiologist would be required to report pursuant to the statute only if the radiologist knew that the attending physician would not comply with the statute.

Dr. McCrudden felt no obligation would lie upon the radiologist to ensure that the attending physician did take the proper and appropriate action.

In addition to his concern as to professional ethics, Dr. McCrudden had concern about legal liability in the theoretical case if the radiologist

> "were the only one [to] release information of this sort initially without consulting with a family doctor."

He seemed to feel that, because the child was not the radiologist's patient, the propriety of the radiologist's making a report in compliance with the statute was somehow affected. He felt that to make any such report would be a breach of confidentiality and an improper release of information.

In elaboration upon the theoretical situation he said that in practice the radiologist would not have seen the patient or talked to the family.

As I have written, my opinion is that in the circumstances of their involvement with Kim in March, 1975 neither Dr. Bennett nor Dr. McCrudden had any responsibility to do more than he did. Neither had any obligation to make any further report pursuant to the Act.

The cross-examination of Dr. McCrudden upon the theoretical situation put to him was difficult for him. I felt he was honest and forthright in his answers. The difficulties, as I saw it, arose because he had never earlier had to put his mind to such a situation. It was a theoretical situation which, in the end, contained a combination of factors which he had not met in his practice and which, apparently in his view, were not likely to arise in practice, but which for him raised questions of legal liability and responsibility and of professional ethics.

Dr. McCrudden's responses to this series of questions seemed to contain the germ of a concept that the law or the ethics of his profession, both as to the disclosure of medical information and as to his relationship with his fellow practitioner would have the effect of preventing or inhibiting him from making a report pursuant to section 41 of the Act.

I think he is in error. I do not accept that concept. In my view the provisions of section 41 of the Act would override any concern which Dr. McCrudden had as to incurring legal liability or professional sanction as a result of making a report as required by section 41(1) of the Act, provided the making of the report was not done maliciously and provided there was reasonable and probable cause for its being made.

Dr. Woods was consulted as an orthopaedic surgeon. He did not testify upon the Inquiry. I should think he is in much the same position as Dr. Bennett and Dr. McCrudden. He would be aware of the nature of the injury, but would not likely have received any information from any source to indicate or suggest to him that Kim had been physically ill-treated. Presumably he saw and treated Kim, but at two months of age she could tell him nothing. There was no criticism of his treatment of Kim.

Thus in my view Dr. Woods was not required to do more than he did. He was not required to make any report pursuant to section 41 of the Act.

Dr. Lota was in breach of section 41 of the Act. She made no report pursuant to the statute. Clearly from what she wrote in the request for Dr. Singh's consultation she had some suspicion that Kim had been abused. While she did not testify upon the Inquiry, I can only assume that that initial suspicion was based on information given to her orally by Dr. Thorp or hospital staff or which she obtained from reading Dr. Thorp's "history" or from her personal observation of Kim and her personal contact with Kim's family. Following Dr. Singh's consultation requested by her she had available to her his report thereon.

Thus she had the initial suspicion which she recorded and that would be reinforced by her reading of Dr. Singh's report.

Dr. Singh testified that he expected she would read his report. In my view she should have read it provided it was delivered prior to Dr. Jumean's return.

Thus she would have had information that Kim was physically ill-treated and would have been required to make a report pursuant to the statute.

In my view Dr. Lota's failure to make that report would not be relieved by any of the factors which I felt mitigated my assessment of the corresponding failure by Dr. Thorp and by Dr. Singh.

Dr. Jumean was the physician to the Popen family. In Dr. Thorp's view, Dr. Lota was Dr. Jumean's *locum tenens*. In Dr. Singh's view Dr. Jumean and Dr. Lota were in partnership. Thus, particularly in Dr. Jumean's absence, Dr. Lota would have been required by the statute to make a report.

Even in the absence of any mitigation of the criticism of Dr. Lota's possible failure to comply with the statute, it is my view that that failure like the corresponding failures of Dr. Thorp and Dr. Singh, would have been of minimal, if any significance in the development of the tragedy.

There was no suggestion that, apart from her possible failure to comply with section 41 of the Act, Dr. Lota was remiss in any of her duties to Kim.

Dr. Jumean in his testimony did offer some complaint that Dr. Lota had not advised him of the particulars and circumstances of Kim's injury and hospitalization in March, 1975. I do not accept that complaint as one having any merit. It ill-behoves Dr. Jumean to make it.

Dr. Jumean did not see or treat Kim during her period of hospitalization in March, 1975. In his testimony Dr. Jumean acknowledged that copies of the history and reports prepared respectively by Dr. Thorp and Dr. Singh with reference to that event were received by his office. Dr. Jumean did not review those documents until much later.

Dr. Jumean testified that he was not aware of the concerns of Dr. Singh as to the possibility that Kim had been abused. He said he became aware of that concern when he saw Kim in June, 1975. I presume that was the visit which led to his telephone calls to the Sarnia Police Force and The Lambton Health Unit on June 16, 1975.

That was rather surprising because Dr. Jumean had attended Kim in April, 1975 and had arranged her admission to hospital on April 28, 1975 for treatment of a respiratory infection. He testified that he had not then reviewed any of the material in connection with Kim's injury and hospitalization in March, 1975. It would seem he was not even aware of the events in Kim's life in March, 1975.

When Dr. Jumean was questioned as to the reason for his not having reviewed Kim's file after his return or at least when he treated her in April, 1975 and admitted her to hospital, his response was that he had arranged for Dr. Lota to take his office calls and he expected that if anything out of the ordinary had arisen she would have pointed it out to him. He testified that Dr. Lota had not advised him of the injury to Kim in March, 1975.

As indicated earlier that excuse is so feeble that it must be disdained. Dr. Jumean had also arranged for Dr. Thorp to attend to some functions of his practice. Dr. Thorp had written a report to Dr. Jumean. Dr. Jumean did not look at it. Dr. Thorp arranged for a consultation by Dr. Singh. Dr. Singh wrote a report to Dr. Jumean. Dr. Jumean did not look at it. The hospital files and records contained copies of the reports of Dr. Thorp and Dr. Singh as well as other documents relevant to Kim's injury in March, 1975. Dr. Jumean did not look at those hospital files and records.

Dr. Jumean made a sad but apparently honest commentary upon the priority of his concerns when he indicated that upon his return from vacation or whatever he had reviewed the financial records of his practice more carefully with his secretary than he had reviewed the medical records of his patients.

The copy of Dr. Singh's report which was in Dr. Jumean's file does not indicate when it was received by Dr. Jumean or his office. I think it reasonable to suppose it was received not later than within one or two days after its preparation on March 26, 1975.

There was no evidence of the date on which Dr. Jumean returned to Sarnia.

Kim remained in hospital for about five days following her admission in April, 1975.

Dr. Jumean testified that he did not in April, 1975 make any observation that Kim had been abused. He said there were no external signs that she had been abused.

In my view, Dr. Jumean was remiss in that upon his return to Sarnia he did not review Kim's file and did not read Dr. Singh's report of March 26, 1975, which may have been in the file or among correspondence, but certainly was in Dr. Jumean's office. Kim was his patient. Surely even the review of financial matters which Dr. Jumean conducted with his secretary on his return to Sarnia would have revealed Kim's admission to hospital and perhaps even the nature of the cause for such admission. In my opinion, Dr. Jumean should have made some inquiries as to what else there might be in her file either in his office or at the hospital. He would then have seen Dr. Singh's report; then he would have been alerted to look at the hospital file and he would have seen Dr. Thorp's written history.

Dr. Jumean is not excused from responsibility even if Dr. Lota did not advise him of the incident.

Dr. Jumean compounded his failure to fulfill his obligations to Kim when he signed the document by which she was discharged from hospital on April 3, 1975. That document clearly shows the nature of Kim's injury and that Dr. Singh and Dr. Wood had been consulted. Dr. Jumean acknowledged that when he signed that form he would have had Kim's entire hospital file in front of him which would have contained Dr. Singh's report. That he did not read it constitutes no reasonable excuse for his ignorance of what was in that file. When he signed that form he in effect was endorsing what had been done by others and was certifying the accuracy of what he wrote.

I was not favourably impressed by Dr. Jumean's responses when cross-examined about that event. He seemed to suggest that the date on which he signed the document is not indicated and could have been four or five months after the event. His entire response was:

> "A. But when did I sign this report. That could have been signed about four or five months after. This has been left until after the child has left and everything. I signed it obviously when I came back. There's no date when I signed it."

By the extravagant reference to four or five months Dr. Jumean destroyed the validity of the rationale suggested by the response. Clearly he had returned to Sarnia on or before April 28, 1975 when he saw Kim and admitted her to hospital. Even by the one statement in that response "I signed it obviously when I came back" supports the view that Dr. Jumean signed that document on or before April 28, 1975.

Dr. Jumean said that what he signed was merely a summary of the discharge report that would have been written by others,

> "probably by Dr. Singh, Dr. Wood and Dr. Thorp...and most likely Dr. Lota."

If then Dr. Jumean was able to summarize the discharge report, one can reasonably assume that earlier reports, such as by Dr. Singh and Dr. Thorp, were in the file and available to him at that time and formed part of the basis for his "summary of the discharge report."

That reinforces my belief that Dr. Jumean was remiss in remaining blind to the existence of those other reports and he failed Kim.

Dr. Jumean said he wrote in the summary of the discharge report:

> "child found to have fracture of left humerus following a fall. Dr. Wood being consulted...[and]...End result of the fracture was good."

That summary contains no reference to Dr. Singh's involvement although Dr. Singh's name as one of the doctors consulted appears on the face of the document on which Dr. Jumean was writing. One must wonder where Dr. Jumean found support for his reference to a fall. Dr. Singh's report does not mention a fall. Dr. Thorp's history does not mention a fall and indeed denies it for Dr. Thorp wrote:

> "There was no history of accident."

and

> "No history fall."

Dr. Jumean did not comply with the requirements of section 41(1) of the Act in March and April, 1975. The information that Kim had been abused was in his office and the hospital files in March, 1975. He should have seen it on his return to Sarnia. That return was no later than April 28, 1975. It was probably much earlier. That he chose not to read his files or the hospital files upon his return amounts to carelessness and does not excuse Dr. Jumean's failure to make the report required by the statute.

Dr. Jumean then further compounded or extended his failure to fulfill his obligations to Kim when, on April 28, 1975, he admitted her to hospital and still failed to read what was in the hospital files as well as in his own office file.

In my view it was Dr. Jumean's own loose professional procedures which resulted in his not having information that Kim had been physically ill-treated on or about March 22, 1975. He acknowledged that Dr. Singh's report did indicate to him that Dr. Singh had a concern that Kim had been abused. That report was in his office and in the hospital files on or shortly after March 27, 1975.

Again if Dr. Jumean was careless on his return to Sarnia he was equally or more so when he admitted Kim to hospital on April 28, 1975. Thus on and after April 25, 1975, Dr. Jumean failed to comply with the provisions of the statute by not making the report which he should have made as to physical ill-treatment of Kim.

Dr. Jumean did make an oral report to the Sarnia Police Force on June 16, 1975, but the testimony he gave with reference to the circumstances leading to its having been made is unsatisfactory. I have dealt with that testimony elsewhere.

He made a similar report to The Lambton Health Unit on June 16, 1975, but did not mention it in his oral testimony.

In Chapter VI I have discussed in detail the testimony relating Dr. Jumean's telephone call to the Sarnia Police Force.

I am satisfied on the balance of probabilities that Dr. Jumean saw Kim on June 6, 1975 and that he did not telephone the Sarnia Police Force until June 16, 1975.

Thus on June 6, 1975, Dr. Jumean failed to fulfill the requirements of section 41(1) of the Act. That default continued to June 16, 1975.

That default by Dr. Jumean may have been of some significance in that the bruises he observed upon Kim on June 6, 1975 probably were well along the way toward complete healing and thus were not very noticeable to Mrs. Saul and Mrs. Hoad and Police Constable Gander on June 17, 1975.

In the light of the failures of the Society from June 17, 1975 that default may not have been important, but, since it was so concurrent with the initial involvement of the Society in Kim's case, it is my view that it is of greater significance than the earlier default of other physicians and of Dr. Jumean himself.

Until now I have expressed the view that the default of each of the physicians involved, viewed separately was of minor significance in the ultimate development of Kim's tragedy. That remains my view, but that is really viewing the default of each physician as a separate instance of default. When one views collectively the defaults of the physicians whom I have criticized in this section of the report, Dr. Singh, Dr. Thorp, Dr. Lota, Dr. Jumean, the individual default of each of them becomes of greater significance.

Of all the physicians, Dr. Jumean is to be most severely criticized. He was the family doctor. He was Kim's doctor. The other doctors reported to him. Whether or not they were correct in law, they relied upon Dr. Jumean to take appropriate action upon their reports, including compliance with section 41 of the Act. Their reliance was misplaced.

Having said that it remains that, if the Society had acted adequately on Kim's behalf from June 17, 1975 onward, any injury suffered by Kim after June 17, 1975 might have been prevented. Those injuries perhaps included those Mrs. Hewitt observed in the mall and the fractured ribs revealed by X-rays taken on August 31, 1975. They certainly included the injuries leading to Kim's hospitalization on August 31, 1975 and to her death on August 11, 1976.

Chapter XXI

The Role of St. Joseph's Hospital, Sarnia, and Its Staff

In large measure the involvement of St. Joseph's Hospital and its staff corresponds to and complements the involvement of medical doctors in Kim's life.

Upon and immediately following Kim's admission to the hospital on March 22, 1975, that hospital, as represented by some of its staff, was aware of the nature of Kim's injuries and of the various explanations therefor given by Jennifer Popen. The hospital and some of its staff had available amongst the hospital's files the various documents completed in connection with Kim's admission to and her treatment in hospital, including the history prepared by Dr. Thorp and the consultation report prepared by Dr. Singh.

My use of the word "staff" includes the members of the nursing staff who attended to Kim and thus also would have access to her file and to those members of the staff who observed Kim or had any contact with her parents. It also includes nurses in a supervisory position in the area of the hospital where Kim was treated. They thus would have an opportunity to observe Kim and her parents and would receive information from other nurses more directly involved in Kim's care. They would also have had access to her hospital file as a basic source of information. It includes members of the hospital's administrative staff responsible for the maintenance of the hospital records and files relating to Kim and her injuries and treatment. It includes Mr. Khattab, employed by the hospital as a social worker to whom Kim's case was referred as a result of Dr. Singh's consultation report.

Thus the hospital and members of its staff had on or immediately after March 22, 1975 information of the physical ill-treatment of Kim and of her need for protection. Possession of that information would have justified and required them to make a report pursuant to section 41 of The Child Welfare Act. They did not make such a report. They are therefore subject to criticism similar to that expressed with reference to the various medical doctors involved in Kim's hospitalization on and immediately after March 22, 1975.

The names of some staff members who had such information were not mentioned. Some were mentioned. They were Mr. Khattab, Mrs. Hewitt and Mrs. Mitchell, a Head Nurse. Mr. Khattab and Mrs. Hewitt testified as did Sister Rita Heenan, Executive Director of the hospital.

As I understood the testimony of Sister Rita, it was to the effect that the general policy of the hospital prior to, on and after March 22, 1975, was to make a report pursuant to the provisions of section 41(1) of The Child Welfare Act wherever and whenever suspicion of child abuse arose.

That policy was not reduced to written form. It appeared to be somewhat loose both in its scope and its implementation.

Sister Rita's broad statement was that hospital staff members were expected to comply with the requirements of the legislation and that that was the general policy of the hospital. That policy and its implementation were open to a variety of interpretations by individual members of the hospital staff. I do not think Sister Rita herself was exactly certain of the details of what she regarded as the policy of the hospital and she was not exactly certain as to its implementation in practice.

I am satisfied that there was no formal procedure whereby the hospital as a separate entity would cause any report to be made. It was left to each member of its staff to determine whether or not a report should be made. It was generally anticipated that any such report would be made only by staff of a particular stature, for example, a director of a department.

Sister Rita said it was the policy of the hospital that any employee who suspected the presence of child abuse in any case would report to the

Society. Her further testimony appeared to limit the scope of that statement. She went on to say that she "suspected" that if a nurse were suspicious of child abuse, that nurse

> "would report to the Director of Nursing which is the normal route and probably it would be reported to me [Sister Rita]."

From that I sensed that Sister Rita "suspected" that the report would be made to a children's aid society or Crown attorney only if the Director of Nursing or she, Sister Rita, as the case may be saw fit.

Sister Rita did say she felt the matter would be mentioned to the supervisory personnel "more from a point of view of giving her information and maybe consulting her about the case before they may report it."

Were the discussion with supervisory personnel only for the purpose of information there could be no objection. It would simply be a report superfluous to that required by statute. The possibility of consultation and thus of either advice or, more seriously, a specific order that a report should not be made to a children's aid society or Crown attorney is objectionable. No employee should be inhibited from making a report pursuant to the statute because he or she knows that to do so would be contrary to the wishes, advice or order of someone in authority over him or her.

Sister Rita said she was content that a director of any department of the hospital or a head nurse could make such a report on behalf of the hospital. It seemed that Sister Rita anticipated that any suspicions of abuse held by employees below certain levels of authority or responsibility would be reported by such employees to their superiors. An example would be nurses reporting to the Director of Nursing, and perhaps even to Sister Rita herself, before any report was made pursuant to the legislation. Certainly Sister Rita did not say it, and indeed said the opposite, when she said it was the policy that any employee who was suspicious could make a report to a children's aid society or Crown attorney.

While I recognize the practical situation that might arise in any general hospital with its numerous employees performing various functions, having various sources of information and with various skills and training and ability to assess information, I do not think that any internal procedure such as that suggested in Sister Rita's testimony satisfies the requirements of the statute. The onus to report lies upon the individual who has the information mentioned in section 41(1) of The Child Welfare Act. It is the personal responsibility of that person.

From a practical point of view if the matter is promptly reported by senior personnel to a children's aid society or Crown attorney, the spirit, but not the letter, of the legislation would seem to be fulfilled. I think the employee who has the information is justified in making and is obliged to make the report directly to a children's aid society or Crown attorney.

He or she cannot make a report to another, whether or not that other is a supervisor, and leave it to the discretion of that other as to whether the report will be made to a children's aid society or Crown attorney. As well, if the report is made directly by the employee who has or claims to have the information on which the suspicion of child abuse is based, the possibility of error in or omission from communication of the report to a children's aid society or Crown attorney is minimized.

An example of that possibility was shown in the testimony upon the Inquiry. There was the alleged error in or omission from the telling by Police Constable Gander to the Society of Dr. Jumean's oral report to Staff Sergeant Allan of the Sarnia Police Force on June 16, 1975.

The procedure which Sister Rita seemed to regard as normal would apparently permit the more senior employee to decide whether or not the report should be passed to a children's aid society or Crown attorney. I do not think the legislation contemplates or permits any such review and assessment and, perhaps, the rejection or withholding of one employee's suspicion of abuse. If the employee has the information and is not acting maliciously or without reasonable and probable cause, that employee should and must make the report directly to a children's aid society or Crown attorney. To do otherwise is to fail to comply with the statute.

When asked as to whether she felt that the making of any such report by a member of the hospital's staff in respect of a child who was a patient in that hospital would contravene the provision of section 48 of Regulation 729 made pursuant to The Public Hospital Act and which prohibited anyone from removing, inspecting or receiving information from a medical record maintained by the hospital, Sister Rita replied that she saw no problem. Her view was that if the employee had the knowledge it would not be necessary for the employee to use the medical record with reference to the patient in making the report. She seemed to assume, as an example, that such knowledge could be gained by the employee observing the patient or having contact with the patient's family without having recourse to the medical records of the patient. I think Sister Rita's view is correct.

Sister Rita seemed to feel that while hospital staff were obliged to comply with the provisions of the statute, no such report should be made by hospital personnel unless, as a matter of courtesy, the medical doctor handling the case was advised of the intent of the hospital staff member to make the report. She went on to say that it became a matter of personal judgement by the staff member as to whether the comments or opinions of the medical doctor would inhibit the staff member from making the report required by the legislation.

That view may be logically or theoretically correct, but, as will be seen from my comments upon Mrs. Hewitt's testimony, in practice, nurses appear, almost instinctively from their training and experience, to regard such reference to the medical doctor as being more than a matter of courtesy. To Mrs. Hewitt it was a reference to the doctor, intended to relieve her of responsibility to pursue the matter further and to give to the doctor the opportunity to make the report to a children's aid society or Crown attorney or to decline to make it as the doctor saw fit.

I note too that Dr. Bates referred to this in his testimony when he said that a dilemma for hospitals and nurses is that nurses are trained to accept and obey the instructions of the medical doctors under whom they are working. He said there is a developing trend for nurses to recognize their responsibility to report and to do so by reporting to their own nursing supervisors who may report to the medical director of the hospital or directly to a children's aid society or Crown attorney.

In my view, as I have said, even that trend and method of reporting by nurses does not satisfy the provisions of the statute.

Sister Rita said that Mr. Khattab was one employee of the hospital she would regard and accept as being able to make a report pursuant to section 41(1) of _The Child Welfare Act_ without reference to anyone else within the hospital. She felt he was knowledgeable as to child abuse and as to the statutory duty to report. She said his duties included an obligation to deal with any case of child abuse which came to his attention. She acknowledged that the hospital held out to medical doctors practicing within the hospital that Mr. Khattab was knowledgeable of such matters.

I am satisfied that when Mr. Khattab presented himself to the hospital for employment he held himself out as a trained and experienced social worker. I am equally satisfied that Sister Rita, representative of the hospital's administration, assumed that he, as such a social worker, was knowledgeable of child abuse and of the provisions of _The Child Welfare Act_, including the provisions of section 41(1). His employment by the hospital began in December, 1974. He said his employment marked the beginning of the hospital's Department of Social Services.

Reference to the term "social worker" raises the issue as to what that term means. The testimony of Dr. Turner indicates that the term may be applied to persons having greatly varied training, skills, experience and responsibility.

Regulations made under _The Child Welfare Act_ contains a definition of the term. That definition is in section 1(e) of Regulation 86. That definition is related to the duties which a person is performing combined with the qualifications set forth in section 13 of that Regulation which requires each children's aid society to classify its "social workers" according to the classifications set forth therein. Excerpts from that Regulation are contained in Schedule 2-B of the Report.

Other statutes and regulations thereunder contain definitions of the term applicable to matters affected thereby.

Dr. Turner testified, and I accept, that there is not, in Ontario, legislation restricting the use of the term. He said that in the public's mind the term is applied to anyone carrying out functions such as performed by Mrs. Saul and Mrs. Hoad on June 17, 1975.

Dr. Turner's testimony was that he and many others in the field of social work were concerned by what they conceive to be a too loose usage of the definition or term "social worker." He said his own view was that the term should be applied in a more restricted manner.

I feel that Sister Rita and the hospital expected that Mr. Khattab would be knowledgeable in the field of child abuse. That was a reasonable expectation based upon his statements as to his qualifications.

While the portions of Dr. Turner's testimony which I am about to mention were directed to the periods of time surrounding the June 17, 1975 and August 31, 1975 incidents in Kim's life, they would seem to be equally applicable to the period surrounding the March 22, 1975 incident and Mr. Khattab's involvement at that time.

Dr. Turner testified that on the basis of what was known to the Society in June, 1975, even the most basic social work practice would have required the Society to make a full assessment of the situation and of the parents and to arrive at certain decisions. He envisaged that that would include a psycho-social history of the family. He indicated that a qualified social worker should have done that.

I gather Dr. Turner regarded the task as one of routinely assembling information and then assessing it and reaching decisions on the basis thereof.

If that were his opinion as to what the Society should have done in June, 1975, it would seem that all the more would that sort of investigation and assessment be required of any qualified social worker to whom the case was referred in March, 1975.

His opinion as to appropriate action by the Society in June, 1975 was based upon what was then known to the Society, an oral complaint, perhaps anonymous, to the police that Kim was the victim of abuse, a visit to and examination of Kim which did not disclose any particularly serious injury but which did disclose elements of concern to the Society's workers sufficient to merit further attention.

In March, 1975 the case was referred to a social worker by a doctor who had noted such a serious injury and was so suspicious of the possible presence of child abuse that he specifically requested the social worker to investigate "the environmental and social status the family lives in." The presence of Dr. Thorp's history and Dr. Singh's consultation report and other documents in the hospital files, expressing concern or suspicion of child abuse, would enhance the need for the sort of investigation and assessment suggested by Dr. Turner.

That was the very sort of investigation and assessment that Dr. Singh requested and expected. Dr. Singh made a reasonable request and had a reasonable expectation of a social worker serving a general hospital, its medical staff and its patients. Mr. Khattab did not respond satisfactorily to the request and did not satisfactorily fulfill what was expected of him.

The hospital reasonably expected that Mr. Khattab was qualified to complete such investigation and assessment. On his own testimony he was not. If he was so qualified he did not fulfill his duties as he should have.

In his testimony, Mr. Khattab said with reference to his involvement in Kim's case in March, 1975:

> "This was my first experience truly in my life about child abuse."

Thus another name is added to the list of those who were assigned to supervise some aspect of Kim's care and who professed to have had no prior experience with the phenomenom of child abuse. They included Mrs. Kirby, Mrs. Lo, Mrs. Maughan, Mr. Brouwer and Mr. Khattab. Mr. Khattab, like Mrs. Lo and Mrs. Maughan, had begun his placement or employment in the particular position in December, 1974, a very short time before becoming involved in Kim's care.

It is sad that so many inexperienced people were directly responsible for Kim's care. I would think that such a conjunction of inexperienced personnel in any one case is unusual. In Kim's case it was an important factor in the tragedy of her life and death.

The presence and effect of Mr. Khattab's inexperience and lack of knowledge were emphasized by his testimony. It was certainly startling. Presumably in a defensive gesture he testified, immediately after the sentence I have quoted above:

> "To me, I do not believe it especially the first time because I came from a culture who have never heard of it."

In that sentence "it" stood for "child abuse" and "the first time" was Kim's case in March, 1975. He continued:

> "I did not feel that this happens that there is a father or a mother who will abuse their child. I didn't believe it."

With that as a basic premise from which to begin his investigation, Mr. Khattab was not qualified to conduct the investigation which Dr. Singh requested.

Having heard Dr. Bates' testimony as to the presence of the phenomenom of child abuse in all parts of the world, I reject Mr. Khattab's suggestion that child abuse was unheard of in the "culture" from which he came. I accept Dr. Bates' testimony that child abuse is perpetrated in all countries, but different cultures do have different standards as to the treatment of children. In one country a particular physical act done by a parent to a child might be regarded as merely an acceptable method of disciplining a child. In another country the same physical treatment of the child would not be acceptable, but would be regarded as an abuse of the child.

It is inconceivable to me that the infliction of injuries such as Kim suffered would be acceptable in any country or culture.

At another point in his testimony relative to the period about March 22, 1975, Mr. Khattab said:

> "...so she [Kim] was about two months old. The matter which makes one suspicious that a child at that age will be punished."

In that same area he said that Jennifer Popen

> "seemed to me very innocent the first time and I believed her."

He accepted Jennifer Popen's explanation of how Kim was injured and that was the end of his investigation. He did not even speak to Annals Popen about it.

Dr. Bates in his testimony, which I accept as authoritative, said the fact that Kim, at about six to eight weeks of age, suffered a broken arm

> "should immediately bring to one's mind the possibility of physical abuse."

Dr. Bates made that statement on the basis only of the nature of the injury and the age of the child and without reference to any of the other circumstances of which Mr. Khattab was or could have been aware from the hospital file. That possibility did come to the minds of Dr. Thorp and Dr. Singh. Mr. Khattab through ignorance or wilfulness chose to reject the possibility on the basis of Jennifer Popen's explanation and without further inquiry.

As I have noted earlier, Dr. Bates testified that infants between their dates of birth and their third birthdays are among a group he chose to call "high risk kids." Thus, if Mr. Khattab thought, as his testimony would indicate he did, that no one could abuse a two month old child he was wrong. He arrived at that conclusion through ignorance or wilful disregard of information known at least to knowledgeable persons working in the area of child abuse.

In my view, Mr. Khattab's testimony, rather than protecting him from criticism, exposes him to criticism. Clearly he approached the references of Kim's case to him with the predetermined position that she had not been physically abused. He had that belief notwithstanding his having read Dr. Singh's consultation report. He had read that report before embarking upon the investigation of "the environmental and social status the family lives in" as recommended by Dr. Singh. In reading that report he must have seen Dr. Singh's expression of strong suspicion that Kim had been abused and was in need of protection to prevent a recurrence of abuse.

Despite having read Dr. Singh's report Mr. Khattab professed disbelief of the possibility of abuse. It took a great deal of self-confidence, indeed too much, for Mr. Khattab admittedly or allegedly, on his own testimony, untrained and inexperienced in the field of child abuse, to disbelieve the possibility of abuse suggested in the written report of a consultant of Dr. Singh's stature, education, training and experience in paediatrics and child abuse.

I have spoken of Mr. Khattab's self-confidence which enabled him to deal so cavalierly with Dr. Singh's expressed concerns and opinions. It utterly escapes me that one who, by his own testimony, was completely ignorant of the phenomenom of child abuse could take upon himself the authority to dismiss out-of-hand Dr. Singh's concerns and to dismiss them without reference to consultation with anyone, not even Dr. Singh.

Mr. Khattab simply accepted Jennifer Popen's "story." He could not believe a parent could abuse a child of that age; so without further inquiry he closed the file. He did not even bother to report to Dr. Singh or to Dr. Jumean or to place any memorandum in the hospital's files to indicate his conclusion and the bases therefor and particularly his basic belief that a parent could not abuse such a young child.

In fairness to Mr. Khattab, I do recognize that investigation of abuse situations may require skills that social workers, social workers in the true sense, do not possess. They are not necessarily trained or experienced in investigative techniques. That stated it must also be repeated he did not really try to investigate and he sought no assistance or advice from persons, including Dr. Singh, who he knew or should have known had particular knowledge and expertise in the area.

So far I have mentioned only that part of his testimony in which Mr. Khattab denied knowledge of the phenomenom of child abuse. His testimony proceeded to another series of statements which startled me.

His academic qualifications as stated by him in his testimony were Bachelor of Arts in Social Work from the Institute of Social Services in Egypt, Master of Theology from the University of Alazhar of Egypt and Master of Arts in Sociology from the University of Alberta. He testified that, apart from completing a thesis, he had met all of the requirements for the degree of Doctor of Philosophy in Sociology from the University of Waterloo.

He testified that in the four-year course leading to his degree of Bachelor of Arts in Social Work there was no mention of battered children. He said the three-year course leading to his degree of Master of Arts in Sociology did not touch upon child abuse or the battered child syndrome. He said the formal courses he took toward the degree of Doctor of Philosophy in Sociology did not contain anything about the battered child.

He said his life experience and work prior to joining the staff of St. Joseph's Hospital, Sarnia had not brought him into contact with families served by or involved with a children's aid society.

He said he was the only social worker employed by the hospital. He said he set up a programme of social work for the hospital. He said his predecessor, while she worked for the hospital as a social worker held a degree in science and was not a social worker. His employment involved work with a variety of people, including alcoholics, elderly people and persons in nursing homes and homes for the aged. His work involved a variety of functions relating to the discharge of patients from hospital. As noted by me earlier, he denied any knowledge of child abuse. However he did not refuse to accept the assignment of Kim's case by Dr. Singh in March, 1975 and in September, 1975, nor did he advise Dr. Singh or anyone of the deficiencies in his knowledge and skills which he stated in his testimony upon the Inquiry.

Mr. Khattab said that when he began his employment with the hospital he had no information or knowledge concerning the battered child syndrome, had not seen any reference to it in any books on sociology, and would not even know where to look to learn something about it. He varied that last answer to indicate, without elaboration as to where that might be, he knew where to look

> "but it was not my speciality originally, so I did not care to look up something which is not in my speciality."

That Mr. Khattab would deliberately and voluntarily limit the scope of his knowledge of the field in which he was employed is startling. That just is not an acceptable attitude for a professional person. Dr. Turner particularly, in his testimony, stressed the importance of persons engaged in the field of social work keeping themselves informed and currently informed as to developments in that field. I accept that that is a basic responsibility of any social worker no matter how broad or limited might be the application of that term.

On the basis of Dr. Turner's evidence, I am satisfied that, currently at least, even if not at the time Mr. Khattab was attending the various courses he described, courses leading to qualification as a social worker do contain substantial and important portions dealing with child abuse or the battered child syndrome or whatever similar term might be applied.

While it seems unbelieveable that Mr. Khattab had never heard or seen any reference to child abuse or battered child syndrome, nonetheless, he held himself out as a social worker to the hospital and others whom he met in connection with that employment. That he was a social worker was the basis of his employment by the hospital. Thus in my view it was incumbent upon him to have skills and knowledge currently required by persons employed as social workers. Mr. Khattab chose not to do that. He failed the hospital. Thus he failed Kim.

Mr. Khattab in possession of the information he had was in my view required by The Child Welfare Act to report the matter to a children's aid society or Crown attorney. He chose not to. He was in breach of the statute and remiss in his duty to Kim.

In March, 1975 members of the nursing staff of the hospital, including Mrs. Hewitt who testified and Mrs. Mitchell, a head nurse who was mentioned by name in testimony, were aware of Kim's injuries and of some or all of the various explanations therefor advanced by Jennifer Popen. The members of the nursing staff who were responsible for Kim's care in hospital and the nursing supervisors and other overseeing that care had access to and might reasonably have been expected to read the hospital file and medical record relative to Kim, including Dr. Thorp's history and Dr. Singh's consultation report with the expressed suspicion of abuse. Those staff members made no report to a children's aid society or Crown attorney pursuant to The Child Welfare Act. They were in breach of that statute and remiss in their duty to Kim.

In my view Mr. Khattab's failure to fulfill the task assigned to him in Dr. Singh's reference of Kim's case to him might very well have been of signal importance. Kim was only two months old. This was the first injury to her detected by or known to any medical doctor or social agency. The Society was not aware of any reason to be concerned about her welfare. If Mr. Khattab had been a qualified social worker with the skills and abilities which might reasonably be expected to be possessed by one employed as he was and if Mr. Khattab had adequately and fully conducted the investigation suggested by Dr. Singh and if Mr. Khattab had reported to Dr. Singh or to Dr. Jumean or to Sister Rita upon the results of that investigation and his assessment of the information assembled by him, others, notably the Society, having responsibility for Kim's protection from ill-treatment would surely have been advised and might well have become involved at once. Then, hopefully, but not necessarily from what is known of the inadequacies of the Society, the ultimate tragedy might have been avoided.

When I express confidence that if Mr. Khattab had carried out an adequate investigation and reported thereon the Society would have been advised, I am assuming that he would have learned some of the particulars of Jennifer Popen's background and earlier life and her variety of stories such as to raise doubts as to her credibility. I assume further that then, with Mr. Khattab's report upon his investigation and Dr. Singh's expression of suspicion of abuse, someone, the hospital or Dr. Singh or Dr. Jumean or someone "covering" for Dr. Jumean, would have reported to a children's aid society or Crown attorney as required by The Child Welfare Act.

Because of the failure of the Society properly to fulfill its role and function on and after June 17, 1975, all of which is dealt with elsewhere in the Report, the simple failure of hospital personnel to make a report to a children's aid society or Crown attorney on or immediately after March 22, 1975, and apart from Mr. Khattab's failure to investigate and find and report upon information which would be of significance, does not appear to have been a decisive factor in the tragedy. Had the Society on and after June 17, 1975 properly investigated and assessed the situation, even then beginning the investigation requested by Dr. Singh in March, 1975, hopefully, Kim would have been protected from the more serious injuries later in 1975 and 1976 and, ultimately, from those which caused her death in August, 1976.

Apart form the failure of Mr. Khattab to comply with Dr. Singh's request that he investigate the situation and apart from the failure of Mr. Khattab and others in the employ of the hospital on or about March 22, 1975 to report the matter pursuant to The Child Welfare Act, no substantial and valid criticism of the hospital or its staff was expressed to or noted by me.

Kim's admission to and confinement in hospital in April, 1975 for treatment of a respiratory ailment, would give no cause to hospital staff to make any report to a children's aid society or Crown attorney. Despite Dr. Jumean's testimony as to having observed that Kim had black eyes the hospital's record contain no reference to that injury.

When Kim was presented and admitted to hospital on August 31, 1975, the nurses and staff conducted themselves in Kim's best interests. They ensured her protection. They ensured that she remained in the hospital, a place of safety, notwithstanding Jennifer Popen's stated desire to remove Kim, and they, with the Sarnia Police Force, arranged for the intervention of the Society when Kim's safety appeared to be threatened.

In submissions made following the completion of testimony upon the Inquiry it was suggested that the hospital and its staff were to be criticized because of the lapse of time between 1:25 a.m. on August 31, 1975 when Jennifer Popen brought Kim to the hospital and about 3:15 p.m. on the same day when the Society were notified by telephone.

On the surface that suggestion would seem to be reasonable. About fourteen hours had passed. So one must look at the circumstances. It was 1:25 o'clock on Sunday morning, August 31, 1975, the day before Labour Day, virtually in the middle of the night in the middle of a long weekend. Presumably hospital staff knew the general deployment of Society personnel, that on nights and weekends Society offices were closed and only a limited number of Society staff were "on call." The accuracy of that presumption is not material to my conclusion. Examination and assessment of Kim and her injuries were being completed. Even after Mrs. Dick's arrival, X-ray examinations of Kim had not been completed. Kim was in the hospital, originally in the Emergency Department but then as an admitted patient, she was in a place of safety. She was being examined, assessed, treated and protected, all in a quite adequate fashion. Until the afternoon of that day no effort or desire to remove Kim from hospital was made or stated. When that desire was made known to the hospital, the Sarnia Police Force and the Society were notified and responded.

In the light of those circumstances the criticism of the hospital and its staff inherent in the suggestion by counsel lacks substance and validity. The passage of time from 1:25 a.m. until about 3:15 p.m. had no effect upon Kim's care or well-being. Even if the Society or Crown Attorney had been notified at 1:25 a.m. anyone on behalf of the Society or Crown Attorney then attending at the hospital could have accomplished no more than was accomplished at and after 3:15 p.m. Kim remained in hospital. When her protection was threatened her continued safety was secured by the hospital staff and Sarnia Police Force advising the Society who, through Mrs. Dick, acted to obtain *de facto* custody of Kim and then retired physically to await the opening of the Society office two days later on September 2, 1975. There was no suggestion by counsel for the Society that anyone attending the hospital on behalf of the Society at any earlier time on August 31 would have acted otherwise or would have accomplished anything more. There was no suggestion that the passage of time from 1:25 a.m. to 3:15 p.m. in any way impeded the Society in whatever it was required to do to fulfill its obligations.

In my view the actions of the hospital personnel on August 31, 1975 were reasonable, proper and effective. They brought about a good result. They did not impede anyone else from proper performance of any duty.

Chapter XXII

The Role of the Lambton Health Unit

The Lambton Health Unit was established under The Public Health Act R.S.O. 1970 chapter 377. For ease of reference in this Chapter I shall call it simply the "Health Unit." Its members are appointed by the Lieutenant Governor in Council, the Municipal Council of The County of Lambton and the Municipal Council of the City of Sarnia. It serves the City of Sarnia and the County of Lambton.

In 1973 the Health Unit, pursuant to the legislation and regulations made thereunder, appointed Dr. Lucy Duncan to be the Medical Officer of Health for the Health Unit. The Health Unit appointed Elizabeth Kuly to be a public health nurse.

Dr. Duncan and Mrs. Kuly testified upon the Inquiry. I relied substantially upon their testimony when writing earlier Chapters of the Report to set forth the contact which the Health Unit had with Kim and her family.

The Health Unit had its initial contact with the Popen family prior to Kim's birth. On May 22, 1974 the Health Unit received a laboratory report from St. Joseph's Hospital in Sarnia. It indicated that Jennifer Popen had a parasitic infestation. Dr. Duncan assigned a public health nurse to visit the Popen home. The purpose of that visit was to ascertain if anyone in the household was engaged in a food handling occupation. That nurse reported, in part, that Jennifer Popen was young, pregnant and suffering from severe morning sickness.

On July 14, 1974 the Health Unit received from the Ministry of Health of the Province of Ontario notification of that condition of Jennifer Popen. That required the Health Unit to maintain surveillance of Jennifer Popen.

Dr. Duncan assigned Mrs. Kuly to visit Jennifer Popen in her home. Mrs. Kuly understood that, *inter alia*, she was to counsel Jennifer Popen upon nutrition and pre-natal care. Mrs. Kuly visited Jennifer Popen on occasions beginning August 21, 1974 and continuing until August 10, 1976.

Mrs. Kuly presented her notes with reference to her visits. They were filed as an exhibit upon the Inquiry. One prepared in August, 1974 was, in part:

> "....Would like to go to prenatal (sic) classes in Sept/74. Shy girl."

Another, prepared in February, 1975, after Kim's birth, was, in part:

> "....Did not go to prenatal (sic) classes."

During the visit in August, 1974, Mrs. Kuly had counselled Jennifer Popen on matters of nutrition and general pre-natal care. When Jennifer Popen had said she would like to go to pre-natal classes Mrs. Kuly had given her information about those classes and how to join them.

It is not surprising that Mrs. Kuly had no special concern about conditions in the Popen home. The home was neat and clean. Jennifer Popen was over her earlier nausea and her choice of food was good. Jennifer Popen gave the impression of interest in what Mrs. Kuly offered.

But, as in other instances, Jennifer Popen did not translate into any action her professed interest in and desire to attend the pre-natal classes. She had told Mrs. Kuly what she felt Mrs. Kuly wanted to hear.

While Jennifer Popen was confined to hospital for Kim's birth in January, 1975 she was visited by another public health nurse of the Health Unit. That nurse recommended to Dr. Duncan that an early home visit by a public health nurse would be helpful. Dr. Duncan accepted the recommendation. Nothing in the records of the Health Unit indicated the reason for such a visit, but Dr. Duncan testified that, on general principles of public health, the visit was desireable because of Jennifer Popen's age, which was believed to be seventeen.

Accordingly, after Kim's birth, on January 11, 1975, Mrs. Kuly visited the Popen home in February, 1975. That was simply a routine visit, a "new baby visit." Mrs. Kuly spoke with Jennifer Popen to discuss general baby care, feeding and immunization and also Jennifer Popen's own care. Mrs. Kuly asked Jennifer Popen to call the Health Unit if any problem arose.

In all of this time Mrs. Kuly observed nothing which caused her any concern for Kim's safety or health.

On June 16, 1975 Dr. Jumean telephoned Dr. Duncan to report that he had examined Kim. He had noted lacerations of her lip and multiple bruising. There was some suspicion that Jennifer Popen had abused Kim. Dr. Jumean spoke of Annals Popen beating Jennifer Popen who then beat Kim. He had advised the Sarnia Police Force. He called the Health Unit to obtain "public health follow-up visiting."

Dr. Duncan testified that based on that telephone conversation she had information that Kim had been physically abused and she did not doubt it.

Dr. Duncan did not immediately contact the Society because Dr. Jumean had said he had contacted the police who later informed the Health Unit that the Society, accompanied by the police, could find no sign of abuse to Kim. Dr. Duncan went on to acknowledge

> "I suppose I should have called the Children's Aid as well."

I agree.

Dr. Duncan testified that the role of the Health Unit was to provide health education to all who ask for it or appear to need it. Cases are referred to the Health Unit from many sources. Those sources include doctors, hospitals, police and the Society.

Dr. Duncan said that the Health Unit did not undertake supervision of any home to ensure compliance with acceptable standards of care. She said that if supervision of a home seemed to be necessary, presumably for the well-being of a child or children therein, the Health Unit would advise the Society of the situation and request that supervision be undertaken by the Society.

If the Health Unit referred a case to the Society it assummed that the Society would thereafter accept responsibility for the family and child.

But the Health Unit would not advise the Society of every home in which children were living and in respect of which the Health Unit felt its services were needed. An example of such a home would be one wherein a child failed to thrive, because of the mother's need for education or counselling in matters of nutrition or feeding, but where it appeared the situation could be corrected by education of the mother by the Health Unit and by the mother obtaining medical advice if required.

Dr. Duncan said that, if the public health nurse believed a child were ill, the nurse would ensure that the child received medical attention. If it appeared that the child had been abused or deliberately neglected, the nurse would refer the case to the Society.

In all of this Dr. Duncan denied that the Health Unit assumed responsibility for the care of a child. She said that responsibility lay on the parents.

There was no testimony upon the Inquiry to suggest that Dr. Duncan misunderstood the duties and powers of the Health Unit and its personnel, including herself as Medical Officer of Health.

From my examination of The Public Health Act and the regulations made thereunder it would appear that, insofar as neglect, abuse and ill-treatment of children are concerned, the Health Unit and its staff had no greater powers or duties than any other citizen not given specific powers and duties under The Child Welfare Act.

It would appear that Dr. Duncan was correct in her assertion in testimony that the Health Unit was not in a position to require that Jennifer Popen and Annals Popen or either or them permit Mrs. Kuly or anyone else to examine Kim. She was also correct in her assertion that Jennifer Popen and Annals Popen could have denied Mrs. Kuly permission to enter their home.

It would seem however that Mrs. Kuly, and perhaps Dr. Duncan, equated "require" to "request." Dr. Duncan, speaking of Mrs. Kuly and her visit to the Popen home on June 23, 1975, said that part of the reason for the visit was to check on Kim's condition, but

> "...she lacked the authority to waken the child and ask it to be undressed, she was helpless to do anything further on that visit."

That latter is not correct. In law, Mrs. Kuly could have asked permission to see and examine Kim. If permission were refused, she then could not insist upon seeing and examining Kim. But it may very well have been that refusal of permission would have created enough concern in Mrs. Kuly's mind to cause her to pursue the matter further with the Society.

That the Society's personnel had examined Kim on June 17, 1975 and had seen no sign of abuse and that Jennifer Popen had said the Society was visiting regularly, would seem to mitigate any criticism of Mrs. Kuly and the Health Unit for not asking persmission to see and examine Kim on June 23, 1975.

However, under section 41 of The Child Welfare Act Dr. Duncan, having received apparently reliable information from Dr. Jumean as to some injuries suffered by Kim and the suspicion as to the cause thereof, was required to report that information to a children's aid society or Crown attorney.

Neither Dr. Duncan nor Mrs. Kuly nor anyone of the staff of the Health Unit made such a report. That failure to report was not a significant factor in the ultimate tragedy.

Mrs. Kuly testified that she had telephoned to the Morality Division of the Sarnia Police Force to inquire about the involvement of the police and the Society in the matter. No one was available to answer her query, but later in the day the police visited her to advise her that Mrs. Saul and the police had visited Kim between June 16 and June 20, 1975 and had found no evidence of abuse, although Kim's parents were angry and upset about that visit. The police advised Mrs. Kuly that the Society would visit the Popen home within a week. They told Mrs. Kuly of Kim's earlier broken arm.

As a result, on June 23, 1975, Mrs. Kuly telephoned the Society to learn its involvement in the case. She was told, she thought by Mrs. Dick, that the case had been assigned to Mr. Carter, a member of the long term care team. Because of her knowledge of the Popen family she was encouraged to visit their home. She did make such a visit on June 23, 1975.

Dr. Duncan testified that Mrs. Kuly was instructed to visit the Popen home on June 23, 1975 even though both the Society and the police had said they found no indication of abuse.

Mrs. Kuly said that the suggestion from the Society that she visit the Popen home was in the hope that, since the Health Unit staff usually were able to establish good relationships with their clients Jennifer Popen and Annals Popen might trust Mrs. Kuly to talk with her about any problem that might arise. A secondary hope was that Mrs. Kuly might see Kim.

During that visit on June 23, 1975 Mrs. Kuly spoke with both Annals Popen and Jennifer Popen. They denied that Kim had been abused. They told her Kim had broken her arm when she fell from a chair because a nephew had loosened the straps of the chair. As to Dr. Jumean's telephone report to the Sarnia Police Force, they claimed that an aunt, who wanted Kim, had "misreported" to Dr. Jumean.

It is not clear from Mrs. Kuly's testimony whether or not she knew that Dr. Jumean had seen Kim before he telephoned the police. From the absence of any reaction by her to the allegation of the matter being "misreported" to Dr. Jumean, I infer she did not have that knowledge.

On that visit Mrs. Kuly saw Kim. Her description of that part of the visit was:

> "A. I did see her briefly as I went out. The child was sleeping at the time and as we were going out, I darted into the bedroom which was on the way out and had a look at her. I only saw the face and head and I didn't notice anything at that point in time."

Mrs. Kuly said her arrangement with the Society was that she would contact them if she saw anything significant in relation to Kim's care. She observed nothing which she felt was significant. She saw no evidence that Kim had been abused. She saw no indication that the family were ready for or needed any help. She saw nothing to cause her to be concerned for Kim's welfare; so she did not telephone Mr. Carter or the Society.

After June 23, 1975 the Health Unit had no specific contact with the Popen family until September 12, 1975. On that date Jennifer Popen came to the Health Unit's office. Mrs. Kuly was not in. Jennifer Popen indicated that she wanted the Health Unit to write a letter which she might give to her lawyer to indicate that she took good care of Kim. Jennifer Popen told the Health Unit employee then, and Mrs. Kuly later by telephone, that the Society had removed Kim from her home. In that latter conversation Mrs. Kuly denied Jennifer Popen's request because, on the basis of the brief time she had spent in the Popen home, she could not vouch for Jennifer Popen's care of Kim.

It would seem that Dr. Duncan became aware of Jennifer Popen's request to Mrs. Kuly and Mrs. Kuly's concerns about it. She instructed Mrs. Kuly to refuse the request. Dr. Duncan said she took that position because, on the basis of the content of Dr. Jumean's telephone conversation to the effect that Jennifer Popen beat Kim after Annals Popen, when drunk, beat Jennifer Popen. Dr. Duncan felt that the Health Unit could not truthfully write a letter such as Jennifer Popen wanted. Dr. Duncan also felt that it was not a responsibility of the Health Unit to write such a letter.

I am satisified as to the propriety of the Health Unit's refusal of Jennifer Popen's request. My only concern is that there should have been any consideration given to the request. Dr. Duncan was absolutely correct to say that the Health Unit could not "truthfully" write such a letter.

Later in her testimony relevant to this incident, Dr. Duncan said that, again in retrospect, she felt she had erred in merely denying Jennifer Popen's request. She said that if the situation were to arise again she would be "more aggressive" and would write a letter expressing her opinion that the child should not be returned and would so inform the Society if her opinion were requested.

Mrs. Kuly testified that after that last telephone conversation she spoke with Mr. Carter by telephone on September 12, 1975. He advised her of Kim's hospitalization on August 31, 1975 and her subsequent discharge from hospital to the care of the Society. He told Mrs. Kuly that Jennifer Popen and Annals Popen would be separately charged with child abuse. Mr. Carter told Mrs. Kuly that Kim was in the care of the Society who would supervise that care. He did not ask Mrs. Kuly to visit the Popen family.

On September 17, 1975 Mrs. Kuly visited the Popen home to try to maintain a working relationship with the family and to respond to any indication that the family might need help. Neither Jennifer Popen nor Annals Popen gave any such indication.

Mrs. Kuly testified that that visit was not a "matter of routine." She was looking ahead to the possibility that Kim would be returned to her home. Mrs. Kuly wanted to maintain communication so as to enable her to help at the time of Kim's return.

Mrs. Kuly received a subpoena to attend Court on October 29, 1975 to testify on behalf of Annals Popen and Jennifer Popen. She attended Court then and from time to time until, on February 18, 1976, Mr. Higgins advised her that the matter was postponed indefinitely and her attendance was not required.

On July 5, 1976, Karie, Kim's sibling, was born. A public health nurse employed by the Health Unit visited Jennifer Popen while she was in hospital for that birth. On August 10, 1976 Mrs. Kuly made a routine "new baby visit" to the Popen home. By that time Mrs. Kuly was aware, but she did not know how she had become aware, that Kim had been returned to her parents' home.

The Society had not advised Mrs. Kuly of Kim's return to her parents' home. The Society had not sought any assistance from the Health Unit after Kim's return.

During that visit Mrs. Kuly hoped to see Kim. Mrs. Kuly was aware "it was known to be a possible child abuse case" and thought it would be helpful for her to observe and be able to report to the Society if she saw anything untoward. She was aware that

> "the family was in the care of Children's Aid and under their very close supervision".

The accuracy of Mrs. Kuly's awareness is suspect. Surely by August 10, 1976, after the proceedings in the Provincial Court (Family Division) of The County of Lambton in the spring of 1976, it would be clear that Kim had been physically ill-treated and was a child in need of protection. The identity of her abuser had not been established although in June, 1975 Mrs. Kuly was aware of the contents of Dr. Jumean's conversation with Dr. Duncan on June 16, 1975. Similarly, one must query her assessment of the supervision provided by the Society as "very close." That latter was based, in part at least, on Jennifer Popen's statements to Mrs. Kuly as to the frequency of visits by the Society.

Jennifer Popen was not a reliable source of information. However the frequency of visits alone is not a measure of the closeness of supervision. From her responses to counsel I gather Mrs. Kuly was not aware of the manner in which the Society was supervising Kim's care.

Mrs. Kuly asked where Kim was. Jennifer Popen said Kim was sleeping, having her afternoon nap.

Mrs. Kuly did not ask to see Kim. She knew the Society was supervising the family and she entrusted Kim's safety to them. She felt that any request to see Kim, in the circumstances, might be construed as "a threatening thing." Jennifer Popen had been describing how the Society's worker had been following her very closely. Mrs. Kuly did not want to jeopardize

> "a fairly good relationship with a family that allows us to accomplish what we do."

Mrs. Kuly was asked if she felt she had built some relationship with Jennifer Popen. Her response was:

> "A. In a way, she wasn't overly hostile to me and she did discuss things with me, but really only what she wanted me to know.
>
> Q. Did you sense that at the time or are you saying that in hindsight?
>
> A. I'm saying that in hindsight. She could appear very open and talked very openly some visits. Other visits she was quite reticent, reserved..."

Thus, during that visit of August 10, 1976, Jennifer Popen employed two tactics I have commented upon elsewhere. Like others before her who sought to see Kim, Mrs. Kuly was denied that opportunity. The denial was polite and apparently reasonable, but it was effective. As she had done with others, Mrs. Lo and Mrs. Maughan are two, Jennifer Popen spoke of the actions of another person. Jennifer Popen had spoken to Mrs. Maughan about Mrs. Lo, to Mrs. Lo about Mrs. Maughan and now Jennifer Popen spoke to Mrs. Kuly again about Mrs. Lo.

Mrs. Kuly forthrightly acknowledged that the opinion expressed in her testimony last quoted was formed in hindsight. Like others, Mrs. Kuly had not correctly assessed the situation as it developed.

During that visit of August 10, 1976 Mrs. Kuly observed nothing that gave her concern for the welfare or safety of Kim or the younger child Karie. Jennifer Popen told Mrs. Kuly that

> "Kim was doing very well and was well physically."

Mrs. Kuly said she had no reason to disbelieve Jennifer Popen.

The care of the infant Karie is not strictly within the purview of this Inquiry, but one element of that care impresses me as being relevant to Kim's care. That element was the actions of various people in respect of Karie in the days immediately following Kim's death. Those actions seem to be indicative of a condition which had an influence upon the handling of Kim's case and the ultimate tragedy of her death.

The Health Unit, as represented by Dr. Duncan, took a strong position. They and she are to be commended for doing so.

On August 12, 1976, having somehow learned of Kim's death which occurred during the early evening of August 11, 1976, Dr. Duncan telephoned the Society and spoke with Mrs. Harvey. Dr. Duncan wanted to know what arrangements had been made to care for Karie. She was concerned about him being in a home where a child had died.

When asked why she had telephoned Mrs. Harvey her response was:

> "A. Because of concern for the baby. The baby, a five week baby was in a home where we knew that the mother had beaten a five month baby previously and that that baby had subsequently died. It's true I had no evidence that Karie had been abused or there was no way to guess that he might be abused, but it was, it seemed a reasonable action to suggest to Mrs. Harvey that Mrs. Harvey must be concerned about the safety of the second child in the home."

And later she added:

> "...There is no doubt in my mind that I was worried about the safety of a baby, a five week baby, in a home where a child had died the day before, when I knew that the mother had beaten the child and the father had been charged with abuse. That was my sole reason for phoning Mrs. Harvey, to discuss with her her feelings about the baby Karie being left in that home. No evidence, no evidence except that a need to act."

Mrs. Harvey told Dr. Duncan that the landlord was caring for Karie. She told Dr. Duncan that she too was "uncomfortable" about the situation, but she felt that there were not "actually sufficient grounds" to enable the Society to apprehend Karie under The Child Welfare Act. Dr. Duncan recalled that Mrs. Harvey said there was no evidence that Jennifer Popen had ever abused Karie and therefore "it seemed doubtful whether it was right to remove" Karie from her. Dr. Duncan understood Mrs. Harvey to equate the word "right" with "legal right" or authority under the statute.

When Dr. Duncan suggested that Mrs. Harvey speak with the Crown Attorney, Mrs. Harvey said she had done so.

Dr. Duncan testified that she:

> "...assured Mrs. Harvey that in spite of the apparent lack of any real reason to do so, that I would be prepared to state that in my opinion the baby, Karie, was in danger and in need of protection..."

In the end Mrs. Harvey agreed to remove Karie from the family home and Dr. Duncan understood that was effected the next day.

The connection which this has with Kim's care is that this was another instance of at least an error in judgement by Mrs. Harvey. It demonstrated her lack of correct understanding of the provisions of The Child Welfare Act. It demonstrated her lack of knowledge of acceptable practices in the field of child welfare.

It was precisely that combination of circumstances, an error of judgement, a lack of correct understanding of legislation and a lack of knowledge of acceptable practice, which led to Kim's death.

But for Dr. Duncan's forthright discussion with Mrs. Harvey, those three elements might have again come into conjunction with equally tragic results.

Dr. Duncan testified as to the relationship between the Health Unit and the Society. Prior to Kim's death that relationship was informal. The communications between the two agencies, to use a word which seemed to be common in the vocabulary of many of the witnesses, was by telephone. Dr. Duncan expected that the family health record maintained by the Health Unit would contain a notation with reference to any telephone conversation.

There was no procedure within the Health Unit whereby, as a matter of course, the staff of the Health Unit would automatically and immediately telephone to the Society to advise that agency of any communication to the Health Unit of any suspicion of child abuse. An example of such a communication was Dr. Jumean's telephone call in June, 1975.

Dr. Duncan spoke of an arrangement or understanding between the two agencies to the effect that when a child was taken into custody by the Society or when the Society was visiting the home regularly the Health Unit's staff would cease visiting that family's home. That was because of a belief that too many social workers might become involved. The Health Unit relied upon the Society.

The testimony upon the Inquiry lends some credence to that belief. In Kim's lifetime several agencies and individuals were involved with her family. They included the Society, the Sarnia Police Force, the Probation Service of the Ministry of Correctional Services, the Health Unit, the hospital, medical doctors, Alcoholics Anonymous, the Parent Effectiveness Training Course and the Provincial Court (Family Division) of the County of Lambton.

The testimony of Mrs. Lo, Mrs. Maughan and Mrs. Kuly demonstrated how Jennifer Popen was able to speak to each of those workers to express criticism of one or more of the others. The reaction of any one of them to any such criticism could easily have made it more difficult for the object of that criticism to work effectively with the Popen family.

Each of those workers was, during Kim's life, unaware that Jennifer Popen had expressed any negative criticism of that worker's performance of her role. In a sense each worker and her role were insulated from the others and their roles.

When asked if there was "any great push" between the Health Unit and the Society to exchange information or make or maintain liaison, Dr. Duncan responded:

> "A. We mostly ran our separate courses..."

Dr. Duncan testified that in June, 1975 the Health Unit was aware that the Society was involved with the Popen family. Police officers had told the Health Unit that the Society would be visiting the home regularly.

Dr. Duncan testified that:

> "...in hindsight I would say that our [the Health Unit] communications with the Children's Aid Society at that time [1975] were unsatisfactory."

When asked to describe in what way the communications were unsatisfactory she replied:

> "A. We were unable to discover why Kim Anne Popen was returned to her home. We would have liked further communications, we would have liked to have received reports on what the Children's Aid workers observed when they visited the home. We would have liked closer communication. This is hindsight."

Dr. Duncan's testimony, admittedly expressing an opinion formed in hindsight, did not suggest that any steps were taken by the personnel of the Health Unit before Kim's death to overcome any of the matters which were later perceived as being "unsatisfactory."

In another area of her testimony, while speaking of the establishment and maintenance of a child abuse team composed of personnel from various agencies or authorities, Dr. Duncan said:

> "...Our conclusion on looking at the events prior to Kim's death was that there was a lack of communication between all the health workers in our area......none of us really had sat down together to discuss this family."

While the portion of Dr. Duncan's testimony which I have reproduced contains reference only to "health workers," she spoke as well of police officers and the probation office.

In 1978, after Kim's death, the Health Unit itself prepared and implemented procedures with reference to cases of abuse or suspected abuse of children. Dr. Duncan said that, although public health nurses are not trained in the examination of children, the Health Unit prepared a form "which details exactly" how a public health nurse is to examine a child in such a case. The staff of the nursing division of the Health Unit

> "must record in writing all communications to the Children's Aid Society."

"Lines of communication" were established with reference to the referral of cases to the Society or to the child abuse team. A public health nurse employed by the Health Unit was appointed to attend case conferences at the Society and to maintain liaison between the two agencies.

The procedures and guidelines developed and implemented by the Health Unit were more extensive than set forth orally by Dr. Duncan in her testimony. Copies of the two documents were filed as part of an exhibit upon the Inquiry. They are reproduced as Schedule 2-I to the report.

Because of the absence of any authority to enable a public health nurse to examine or even see a child, Dr. Duncan requested that orders made in the Provincial Court (Family Division) of the County of Lambton, in appropriate cases, contain a provision to authorize the public health nurse to examine the child. She said that such a provision was contained

> "in several court orders which we have received recently [1978]."

Dr. Duncan recognized particularly the limitations of the ability of the staff of the Society to detect signs of abuse of children. Public health nurses were also limited in those abilities. She recommended that children in cases of abuse or suspected abuse be examined regularly by a medical doctor.

In another Chapter of the Report I review recommendations made by witnesses upon the Inquiry. I include there other recommendations made by Dr. Duncan. I have mentioned this specific recommendation by Dr. Duncan because, on December 16, 1977, she wrote to Judge George Thomson, Associate Deputy Minister, Children's Services, of the Ministry of Community and Social Services. Her letter contained a recommendation similar to that which I have just mentioned.

Perhaps one brief comment made by Dr. Duncan in her testimony is the sad summation of the failure of a multitude of persons and organizations to protect Kim. She said:

> "...In retrospect, if we had known as much as is now known about Mrs. Popen's background, all the agencies involved would have probably behaved differently."

The Health Unit did not report to a children's aid society or Crown attorney immediately upon receiving Dr. Jumean's telephone call on June 16, 1975. The Society were informed of and actively involved in the matter on June 17, 1975 and by June 23, 1975 Mrs. Kuly was in touch with the Society and visited the home by arrangement with the Society.

Mrs. Kuly did not examine Kim at any time, nor did she ask permission to do so. Mrs. Kuly was not, by law, entitled to require Jennifer Popen and Annals Popen to permit her to examine Kim. She did not seek permission. Presumably she wanted to maintain a good relationship with the Popen family. She understood that the Society was actively involved in the case. She was entitled to assume that the visits by the Society's personnel would include observation and examination of Kim.

The Health Unit did not advise the Society of Jennifer Popen's request in September, 1975 for a letter commending her care of Kim. In retrospect, Dr. Duncan would now advise the Society of such a request and of her denial of it, with a letter of opinion if requested by the Society. The Society was fully aware of Mrs. Kuly's visit in June, 1975 and yet did not follow up on that to ask her for an opinion or even for her observations. The subpoena to Mrs. Kuly in the fall of 1975 was issued on behalf of Jennifer Popen and Annals Popen.

Dr. Duncan spoke of poor communication between the Health Unit and the Society. In my view the Society was clearly the agency primarily responsible from June, 1975 for the management of Kim's case. The primary responsibility lay upon the Society to establish and maintain communication between the Society and others involved or interested in the case.

In light of the Society being the agency primarily responsible for Kim's case it was reasonable for the Health Unit to rely upon the Society to accept responsibility for visits to and supervision of the Popen home. In keeping with the informal arrangement between the agencies the Health Unit discontinued visits to the home because of the presence of the Society.

In my view the Health Unit bears little responsibility for Kim's tragedy. In all of the circumstances it seems likely that the tragedy would not have been averted even if, in the areas where I have expressed criticism of the Health Unit, its personnel had acted so as not to merit that criticism.

Chapter XXIII

The Role of the Office of the Crown Attorney for the County of Lambton

For the purposes of this Chapter I shall call the Office of the Crown Attorney for the County of Lambton simply the "Office of the Crown Attorney." Andrew Matthew Lang was the incumbent of that Office at all times relevant to this Report.

To assist readers of the Report, extracts from The Crown Attorneys Act are reproduced in Schedule 2-C to the Report.

The Office of the Crown Attorney became involved in the events of Kim's life when the Sarnia Police Force began its investigation following Kim's admission to hospital on August 31, 1975.

In September, 1975, members of the Sarnia Police Force consulted Mr. Lang with reference to the case and their investigation. They sought his advice as to what charge or charges, if any, could or should be laid as a result of the injuries suffered by Kim on or about August 31, 1975 and on earlier occasions.

As a result of those consultations, Mr. Lang's advice was that both Jennifer Popen and Annals Popen be charged with an offence under section 40(1) of The Child Welfare Act in that they did fail to protect Kim. The Sarnia Police Force accepted Mr. Lang's advice. The appropriate information to institute the proceedings against the parents jointly was signed by Police Constable Wyville on October 16, 1975. That information alleged that the offence was committed between January 11, 1975, the date of Kim's birth, and August 31, 1975.

For brevity I shall hereafter call The Child Welfare Act simply the "Act."

Thus it would seem that any evidence relating to any failure to protect Kim at any time during her lifetime to August 31, 1975 would have been relevant and, subject to the usual procedural and evidentiary requirements, would have been admissible upon the trial. This would have included, if appropriate, evidence concerning her prior medical history, hospital admissions and injuries, such as those observed by Mrs. Hewitt in the mall and those healing fractures of the ribs revealed upon the X-ray photographs examined by Dr. McCrudden.

Mr. Lang's testimony upon the Inquiry was that his advice to the Sarnia Police Force was to lay the charge under the Act rather than to lay a charge of causing bodily harm or of assault causing bodily harm under section 245(2) of the Criminal Code. He said that advice was based on his opinion that, since Kim was unable to testify, it would be difficult or impossible to meet the onus and standard of proof beyond a reasonable doubt as to the identity of whoever had caused Kim's various injuries. He felt that the identity of that person or those persons was an essential ingredient or element of a charge laid under the Criminal Code. He felt that in the case of a charge against the parents under section 40 of the Act the only elements to be proven were that Kim was in or under the care, custody or control of her parents and had suffered injuries from which it could be argued that the parents had unlawfully failed to protect her. He felt that in the case of a charge against the parents under the Act the identity of the person or persons causing the injuries was not an element which would have to be proven to support a finding of guilt.

The advice given by Mr. Lang was sound. His appreciation of the matter as presented to him was reasonable.

Unfortunately, when summonses were issued and served upon Jennifer Popen and Annals Popen, they were returnable on October 30, 1975 before "the Provincial Judge" without reference to whether the Provincial Judge was sitting in the Criminal Division or Family Division of the Provincial Court of the County of Lambton.

The case was placed on the list of cases to be heard by the Provincial Judge sitting in the

Provincial Court (Criminal Division) of the County of Lambton.

An endorsement upon the information indicates that on October 30, 1975, Mr. Higgins appeared for the parents and the matter was adjourned to November 13, 1975. It is not clear from the documents who appeared for the Crown, but Mr. Lang testified, and I accept, that he appeared on both October 30 and November 13, 1975. Mr. Higgins' testimony, which I accept, was that he made representations to the Provincial Judge sitting in the Provincial Court (Criminal Division) of the County of Lambton whereby he disputed the jurisdiction of any provincial judge sitting in provincial court (criminal division) to deal with such a matter. He relied on section 20(1)(d) of the Act which provides that in Part II of the Act, which contains section 40, "judge" means a provincial judge presiding in a provincial court (family division). Mr. Higgins testified that the matter was adjourned because the provincial judge sitting in the Provincial Court (Criminal Division) of the County of Lambton was surprised by the submission. There was no evidence as to the position taken by Mr. Lang.

It would seem that Mr. Higgins too was somewhat surprised by the submission he made on October 30, 1975. On October 29, 1975, when speaking to his own request for adjournment of the Society's application for custody of Kim, he based his request, in part, upon the existence of the section 40 of the Act charge to be heard "in another court" and his view that a decision should be reached on it before the Society's application was heard.

When it was suggested that the Society's application might be heard on January 19, 1976, Mr. Higgins continued his statement to the Court as follows:

> "Why don't you set that day with this perhaps in mind--that myself and Mr. Carter or Mrs. Harvey can discuss this matter. By that time the other charges will have been dealt with. I think they will, because I think they are ready to deal with cases in December. Then they might be able to tell

> how long it would take, and they can come back and say it won't take a whole day."

Clearly the words "the other charges" referred to the charge under section 40 of the Act and the words "they are ready to deal with cases in December" referred to the Provincial Court (Criminal Division) of the County of Lambton.

Thus, even on October 29, 1975, unless he was seeking to obfuscate the matter, Mr. Higgins apparently expected the trial of the charge under section 40 of the Act to be held in the Provincial Court (Criminal Division) of the County of Lambton.

On November 13, 1975, the matter was transferred from the Provincial Court (Criminal Division) of the County of Lambton to the Provincial Court (Family Division) of the County of Lambton which hereafter in this Chapter of the Report shall be called simply the "Court."

The evidence is not clear as to who was responsible for the matter being placed on the list of cases for hearing in the Provincial Court (Criminal Division) of the County of Lambton. There was no evidence of any discussion between Mr. Lang and members of the Sarnia Police Force as to the venue of any trial resulting from the charge under the Act. Presumably Mr. Lang was not consulted as to that particular and did not put his mind to it. Nonetheless it would seem he or his office must share with the Sarnia Police Force responsibility for the error.

The error as to the court in which the trial would be held did lead to some confusion and to delay. One such delay was the adjournment of the hearing of the Society's application from October 29, 1975 to January 19, 1976, a delay of almost three months. Thus that confusion and delay affected not only the trial of the charge under section 40 of the Act against the parents, but, indirectly, also the hearing of the application of the Society for custody of Kim pursuant to the Act. Thus too all that might flow from the decision in either matter, including long-range plans for Kim's care, was similarly delayed.

After the transfer to the Court, Jennifer Popen and Annals Popen appeared in Court on November 17, 1975 and pleas of not guilty were entered on behalf of both of them. The matter was adjourned to January 19, 1976 for trial. The transcript does not indicate the names of counsel appearing with reference to the charge under section 40 of the Act, but Mr. Higgins was present in Court to represent the parents upon the Society's application under the Act.

It should be noted that the Society's application for custody of Kim was first presented in Court on September 8, 1975. Hearing of that application was then adjourned until October 29, 1975 and, subsequently, to January 19, 1976.

Thus, by January 19, 1976 both matters, that of the charge against the parents under section 40 of the Act and that of the Society's application for custody, were scheduled for hearing in the Court on the same day. Presumably all parties to each of the proceedings were aware of the existence of the other concurrent but essentially separate proceeding.

The portion of the transcript of the Court proceedings on January 19, 1976 relevant to the charge under section 40 of the Act against the parents is brief. It is merely:

> "Further adjourned to February 23, 1977 (sic) due to inavailability (sic) this date of witness, Dr. Singh."

There is no indication as to the identity of counsel or the presence of parties and witnesses.

It would seem that this transcript is in error as to the date to which the matter was adjourned. A notation on the back of the Information, presumably made by the Court Clerk, shows the hearing to be adjourned to "25 Feb, 76". From other testimony it would seem that that notation is correct.

The transcript in respect of the Society's application for custody is more extensive. Mr. Higgins appeared for the parents. Mrs. Harvey represented the Society. In summary, Mrs. Harvey sought an adjournment because of Dr. Singh's absence, but indicated a desire to present all other witnesses before the hearing was adjourned. Mr. Higgins opposed any interruption of the hearing, but did not oppose the adjournment of the entire hearing.

That latter transcript indicates that hearing was adjourned to February 25, 1976.

Thus both matters were to be heard in the Court on the same day.

From the confidential brief prepared by Police Constable Wyville of the Sarnia Police Force for use by the Crown Attorney upon the trial of the charge under section 40 of the Act, I am satisfied that Dr. Singh was an essential witness to prove the full nature of Kim's injuries which were seen on August 31, 1975 and her earlier injuries seen in March, 1975. No explanation was given for the failure to ensure Dr. Singh's attendance. Responsibility for that failure as it relates to the charge under section 40 of the Act lies on one or both of the Office of the Crown Attorney and the Sarnia Police Force. Responsibility for that failure as it relates to the Society's application lies on the Society.

I bear in mind the testimony of various witnesses as to the desirability that proceedings relating to the welfare, care and custody of children be conducted expeditiously. There was further testimony as to the length of time which had already expired since the matter of Kim's care came again to the attention of the Sarnia Police Force on August 31, 1975 and initially to the attention of Mr. Lang in early September, 1975. That also applied even to the period from October 16, 1975 when Police Constable Wyville signed the information alleging the offence. There were the very lengthy adjournments that seemed invariably to be required in the Court. In the light of all that it is unfortunate and inexcusable that whoever was responsible for the attendance of witnesses failed in that responsibility.

That failure, by the Office of the Crown Attorney or by the Sarnia Police Force on the one matter and by the Society on the other, resulted in a further delay of more than five weeks. The Office of the Crown Attorney, responsible for the presentation of the one matter in Court, must bear at least some responsibility for that failure and for whatever flowed from it. In saying that I recognize that the Office of the Crown Attorney followed a practice rather common in Ontario whereby such offices rely upon the police force having jursidiction in the area to secure the attendance of witnesses upon trials proceeding in provincial court.

As will be noted elsewhere in this Report, the Society is to be similarly criticized because whoever of its staff were responsible for the attendance of witnesses upon the hearing of its application failed to fulfill that responsibility.

The failure of the Office of the Crown Attorney and the Sarnia Police Force is all the more glaring since the adjournment from November 17, 1975 to January 19, 1976 was "for trial." The Crown Attorney and the Sarnia Police Force should have known that the trial was to proceed that day and should have been prepared for trial. One can only speculate as to what might have occurred on January 19, 1976 if Mr. Higgins had vigorously opposed the adjournment.

There was no evidence to indicate when the Office of the Crown Attorney learned that Dr. Singh would not attend Court on January 19, 1976. Mr. Higgins apparently was not informed of that until a few minutes before the case was called on January 19, 1976. Police Constable Wyville told him only then that Dr. Singh was away.

It would seem that Dr. Singh, Police Constable Wyville and other witnesses were present in Court on October 29, 1975 when hearing of the Society's application was adjourned to January 19, 1976 and, at the request of the Society, was marked as peremptory.

There is nothing to indicate that Dr. Singh was present on November 13, 1975 when the charge under section 40 of the Act was transferred from the Provincial Court (Criminal Division) of the County of Lambton to the Court or on November 17, 1975 when that matter was adjourned to January 19, 1976 for trial. It may be that everyone in Court on November 17, 1975 assumed that when, on October 29, 1975, January 19, 1976 had been selected and fixed as a peremptory date for hearing of the Society's application the attendance of all necessary witnesses, including Dr. Singh, would have been arranged or ensured. No one was entitled to make such an assumption. Someone should have inquired.

After January 19, 1976 the next involvement of the Office of the Crown Attorney in these matters occurred on or about February 10, 1976. Mr. Lang received a letter from Mr. Higgins dated February 10, 1976. In that letter Mr. Higgins wrote:

> "I am instructed by my clients that...Mr. Popen will acknowledge responsibility for injuries to the child".

The letter went on to note that the trial had been adjourned to February 25, 1976, but Mr. Higgins asked that

> "it be advanced to the morning of February 11, 1976 or to 1:30 p.m. on Monday, February 23rd."

The letter concluded:

> "I feel this matter can be dealt with briefly as proposed."

Mr. Lang testified that on receipt of the letter he telephoned Mr. Higgins to advise him that no one from the Crown Attorney's office could be available for trial on February 11, 1976.

Mr. Lang testified that at some time he did speak with Mr. Higgins about the portion of the letter which said that Annals Popen would acknowledge responsibility for the injuries to Kim. He testified that it became clear to him at some point that Mr. Higgins was proposing that Annals Popen would enter a plea of guilty to the charge under section 40 of the Act and that the similar charge against Jennifer Popen would be withdrawn.

He said he was not informed as to the manner in which Annals Popen's responsibility for Kim's injury would be acknowledged in Court. He said he understood it would be an acceptance of full responsibility for all of the injuries described by the doctors at the end of August, 1975. He denied that he had been informed that, in explanation of Kim's injuries, evidence would be tendered to show she had been struck by a slipper thrown by Annals Popen. He did not regard that as a sufficient explanation for the injuries and had he been told of it he would have queried it. I should note that the transcripts of the proceedings in Court which were produced upon the Inquiry do not indicate that any such explanation was offered in Court. Jennifer Popen did make reference to that alleged incident in her testimony upon the Inquiry. She said she had mentioned it to Annals Popen. Even she acknowledged upon the Inquiry that a thrown slipper could not have caused the injuries which Kim suffered.

Mr. Lang testified as to his "clear distinct recollection" that, when he had formed that opinion of Mr. Higgins' proposal, he telephoned Staff Sergeant Allan of the Sarnia Police Force to advise him of the proposal, to obtain Staff Sergeant Allan's reaction to it and to suggest that the position of the Society to that proposal should be determined.

He said he was interested in the position of the Society because, as he read Mr. Higgins' letter, the proposal seemed to "link" the charge under section 40 of the Act with the Society's application for custody of Kim. He said that he understood Mr. Higgins to mean that the hearings of both matters would be moved from February 25 to February 23, 1976. Mr. Higgins' letter certainly is open to that interpretation for it speaks of "this matter" in the singular and refers to both the charge under section 40 of the Act and the application by the Society.

Mr. Lang said that if he had understood that both hearings were not to be held on the same day, he would have inquired as to the reason for their being separated. In his view both should ordinarily have been heard on the same day, but he did not feel that his Office should have any direct responsibility for the conduct of the application for wardship. He felt that would be so even if it had arisen out of a decision by the Judge hearing the charge under section 40 of the Act to apply subsection 3 of section 40 and to proceed as if the child had been brought before him as a child apparently in need of protection. Mr. Lang felt that such an application would require more background information than would ordinarily be available to the Crown Attorney proceeding upon a charge under section 40(1) of the Act. He felt the Society would then be required, under section 34 of the Act, to appear upon the application and perhaps to call upon the police and the Crown Attorney for information they might have obtained but which would not be admissible as evidence upon the charge under section 40(1) of the Act.

As I understood the thrust of his testimony, Mr. Lang said he wanted to learn the position of the Society. That was because he felt that an improper result would be achieved if, in respect of the charge under section 40 of the Act, he were to accept Annals Popen's plea and withdraw the charge against Jennifer Popen and, in respect of its application for custody, the Society were to seek to place on Jennifer Popen responsibility for Kim's injuries.

Mr. Lang continued his testimony to say that very shortly after that Staff Sergeant Allan "came back to me and said well, they're agreeable to this disposition." Mr. Lang testified that he had the impression that, in using the word "they," Staff Sergeant Allan was referring to the Society.

Staff Sergeant Allan was unable to recall those telephone conversations with Mr. Lang, but did recall at least one conversation with Mr. Lang about the specific issue of whether, in the light of a guilty plea by Annals Popen, the charge against Jennifer Popen should be withdrawn. Staff Sergeant Allan did not recall having contacted the Society about that issue, but went on to say:

> "...I have great respect for Mr. Lang and if he told me to do something I would either have it done by whoever was looking after the case or somebody would do it."

Staff Sergeant Allan did express the view that "we," I presume he meant the Society and the Sarnia Police Force, had no alternative but to accept the proposal and that that would have been communicated to the Society by whoever contacted the

Society. He said that Police Constable Wyville was looking after the case and that the proposal would have been discussed with Police Constable Wyville.

Police Constable Wyville was not able to recall that he made any contact with the Society specifically to discuss the proposal inherent in Mr. Higgins' letter and subsequent discussion with Mr. Lang. He did say he had numerous contacts with the Society and Mr. Carter at about that time and might have discussed the proposal with him. He said he had been informed of the proposal, but could not recall discussing it with the Society. He had testified that the Society would not have been directly involved in the discussion between Mr. Lang and Mr. Higgins.

Both Mr. Higgins and Staff Sergeant Allan in their testimony, in different ways and with reference to different details, expressed confidence in Mr. Lang's recollection of the events. I share their high regard for Mr. Lang. I too accept his testimony without any reservation except in the area of some relatively minor details which I specifically mention.

I am satisfied that the course of the proceedings on and after February 10, 1976 was determined by Mr. Lang's belief that acceptance of Mr. Higgins' proposal was in the best interests of the administration of justice and would achieve an appropriate result. It would seem that in forming that belief Mr. Lang lost sight of his original opinion as to the charge to be laid and as to the elements of that charge.

That course of the proceedings was also determined by Mr. Lang's further belief that both the Sarnia Police Force and the Society concurred in his acceptance of the proposal and his proceeding accordingly.

I am satisfied that both of those beliefs were well-founded even though, as I indicate elsewhere, it is clear, on the evidence upon the Inquiry and perhaps even on the information available to the Office of the Crown Attorney, the Sarnia Police Force and the Society in February, 1976, that Jennifer Popen was guilty at least equally with Annals Popen of having failed to protect Kim during the period mentioned in the information. Of the three, only the Office of the Crown Attorney was not aware of the suspicion or suggestion that Jennifer Popen was directly responsible for Kim's injuries. Both the Society and the Sarnia Police Force were aware of such a suspicion or suggestion.

All of these various discussions must have been completed by February 16, 1976 for on that date an employee of Mr. Higgins' wrote to Mr. Lang to "advise" him that the matter had been brought forward to February 23, 1976 at 1:30 p.m.

Mr. Lang continued his testimony to state that he instructed the Assistant Crown Attorney, Mr. Hibberd, to appear on February 23, 1976. He said that Mr. Hibberd's presentation of the case and consent to the withdrawal of the charge against Jennifer Popen were entirely in accordance with those instructions. Mr. Lang said he had no further direct involvement with the matter after that instruction to Mr. Hibberd, but he said he was kept informed of the proceedings.

It is interesting to note that in February 1976, Mr. Hibberd was the only full-time Assistant Crown Attorney on Mr. Lang's staff. Two barristers in private practice in Sarnia were authorized and retained by Mr. Lang on a part-time per diem basis to appear as Assistant Crown Attorneys.

An undated memorandum in the Crown Attorney's file with reference to Kim's case indicates some of the pressures upon Mr. Lang in the performance of his office.

Mr. Hibberd testified that a secretary in the Crown Attorney's Office informed him that that memorandum was prepared on February 23, 1976. He said that the secretary informed him that she was having difficulty getting someone to appear in the Court for Kim's case that day. He said that at that time the Office of the Crown Attorney did not supply a Crown Attorney to the Court on a regular basis but "only as and when required" by the Judge through the court administrator or if the Crown Attorney, having been advised of a case pending in the Court, felt it was necessary for him to attend, as in the case of charges of assault upon a spouse contrary to the Criminal Code. He opined that that gave rise to the "panic" on that day.

That memorandum indicates that the trial was "set for February 23, 1976, 1:30," that a Crown Attorney was required, that Mr. Higgins had advised that the trial should take only about fifteen minutes and Mr. Lang should be asked as to whether one of the part-time Assistant Crown Attorneys should be engaged or "can we work Mr. Hibberd in before Prov. C. [Provincial Court] at 2:00."

On Mr. Hibberd's evidence he was "worked in." He had no recollection that he had any knowledge of the matter until his actual appearance in Court. Mr. Lang's testimony indicated he had spoken with Mr. Hibberd

> "at approximately 4:30 one day...and I am aware of what transpired in the Family Court the next day..."

Those words would seem to indicate that the discussion between Mr. Lang and Mr. Hibberd occurred the day before the trial on February 23, 1976. February 23, 1976 was a Monday. I doubt that the discussion occurred on Sunday, February 22, 1976. Mr. Hibberd had no recollection of it whatsoever.

Mr. Hibberd's testimony was that on February 23, 1976 he was required to appear as Crown Attorney in the Provincial Court (Criminal Division) of the County of Lambton in the morning and in the afternoon. He said Mr. Lang was engaged in the Supreme Court of Ontario. He said that in February, 1976:

> "It wasn't uncommon to have a hundred items in the remand docket and pleas of guilty and anything up to seven trials."

He testified that, at that time, Mondays were particularly busy days. When asked what he would have done on February 23, 1976, he replied:

> "Go without lunch is what I would have done."

He said the Provincial Court (Criminal Division) of the County of Lambton adjourned at about 1:00 p.m. and was to resume at 2:00 p.m.

At another point in his testimony, when asked if he had reviewed the Act, particularly section 40, prior to appearing in Court his response was:

> "I can't recall whether I did or not...what I would expect happened is that I came downstairs from the Criminal Court on the third floor and was handed this and went practically uninterrupted into the Family Court."

Mr. Hibberd had no recollection of his instructions or of his presentation of the case. His testimony was based upon his reconstruction of events. His reconstruction in turn was based upon his usual practice and the various documents presented as exhibits upon the Inquiry. He felt he would have been told that Annals Popen was going to plead guilty.

By the analogies drawn in his testimony, I feel he probably approached the trial with an underlying belief that one of the elements of the offence charged against Annals Popen and Jennifer Popen was that one or both of them had caused Kim's injuries and that, in the face of Annals Popen's plea of guilty, the Crown Attorney would have some difficulty in proving that element in the case against Jennifer Popen if she were to plead "not guilty."

Mr. Hibberd testified that, in retrospect, he felt that proof simply that the person charged failed to protect Kim would be sufficient to support a finding of guilt upon the charge under section 40 of the Act, but that at the time and in the circumstances of the trial he must have been satisfied that Annals Popen had "committed these acts."

He said that from his reading of the brief prepared by the Sarnia Police Force for the Crown Attorney it would be very difficult to say whether Annals Popen or Jennifer Popen had abused Kim.

In his testimony Mr. Hibberd indicated a lack of knowledge as to his right, when appearing as Crown Attorney, to call witnesses to testify, even as to the nature or extent of injuries or as to sentence, following a plea of guilty. In any event he must have been content with the summary he read into the trial proceedings.

In cross-examination Mr. Hibberd testified that in retrospect it would be advisable for doctors and medical personnel to attend and testify at a trial even if a plea of guilty had been indicated. He also felt that the Society's personnel familiar with the case should be present although the investigating police officer is the one upon whom the Crown Attorney relies for information.

In part that arose from Mr. Hibberd's lack of recollection as to who were present at the trial. He presumed that in the circumstances no witnesses other than the investigating officer were present. He presumed they had been subpoenaed for February 25, 1976 and that, with the arrangement for plea on February 23, 1976, the witnesses were informed they need not attend.

Those presumptions were not entirely correct. The transcript of the proceedings on February 23, 1976 indicate that at least Mrs. Harvey of the Society was present. Other competent witnesses may have been present, but their attendance was not noted nor would I expect that it would be noted.

Mr. Hibberd, in his testimony, said that in most cases proceeding in provincial courts the Office of the Crown Attorney had little time to prepare for trial. He spoke of the obligation upon the Crown Attorney to appear in the Provincial Court (Criminal Division) of the County of Lambton in the City of Sarnia and elsewhere in the County of Lambton and in the Supreme Court of Ontario and in the County Court of the County of Lambton. He described it as "a tremendous caseload" for Mr. Lang and himself. He felt the office required another full-time Assistant Crown Attorney.

Mr. Hibberd testified that it was "almost an impossibility" for him to review the file of each case before appearing in provincial court to present that case on behalf of the Crown. If possible the night before, he did try to "skim through them as you would a deck of cards." He went on to say:

> "If I see a charge that I don't recognize and haven't dealt with before, I'll read it and take my Criminal Code with me and try and find out the elements of the offence that I'm going to have to prove."

Even if Mr. Lang's recollection that he instructed Mr. Hibberd at about "4:30 p.m. one day" is correct it would seem that Mr. Hibberd was unable even to do that minimal amount of preparation for trial. Even for a plea of guilty counsel appearing for the Crown should be aware of the elements of the offence charged.

For my present purposes I am prepared to accept Mr. Lang's recollection as being essentially accurate. That does not take away from the basic thrust of Mr. Hibberd's testimony as to lack of opportunity to prepare a serious case for trial in provincial court.

Mr. Hibberd's testimony was that:

> "Quite often we don't get the briefs until we go into court on the very day."

From notations made upon the brief he expressed the opinion that in this instance the brief was made available to the Crown Attorney's office on or before October 30, 1975 and thereafter remained in that office's files to be brought forward from time to time as required for appearances in court.

Mr. Hibberd testified that "it would be a physical impossibility" before trial in provincial court to review each file with the police officer responsible for the case in that file. He said such reviews were made of files in respect of which the trials were to be held in the County Court of the County of Lambton or in the Supreme Court of Ontario. He said that was because such trials usually were of longer duration than those in provincial court and it was necessary to complete a number of preparatory and procedural steps, including preparation of the indictment and subpoenaes for witnesses. He said the latter particularly would involve consultation with the police officer to determine what witnesses were required and available for trial. That in turn would require the police officer to advise the Crown Attorney of what the testimony of each witness was expected to be, and perhaps to obtain from some witnesses and deliver to the Crown Attorney statements signed by such witnesses. It might also require the police officer to deliver to the Crown Attorney copies of documents, such as medical reports and hospital records.

I am satisfied that Mr. Hibberd did not in any such sense prepare for this trial of Annals Popen and Jennifer Popen. He was not afforded a proper opportunity to do so.

Mr. Hibberd's assessment of the brief prepared by Police Constable Wyville in this instance was that it was of average length for a trial in provincial court, but it was shorter than usual for a trial in the County Court of the County of Lambton or in the Supreme Court of Ontario.

Mr. Hibberd testified that he had no connection with the case after February 23, 1976. Someone did represent the Crown Attorney upon the sentencing of Annals Popen on March 29, 1976. Mr. Lang was aware of the sentence imposed and was content therewith. There was no evidence as to the instruction, if any, given by Mr. Lang to the part-time Assistant Crown Attorney who, I assume, did attend. There was no evidence as to the submissions, if any, made by the part-time Assistant Crown Attorney upon sentence.

It is disturbing that a case as serious as this was dealt with by the Office of the Crown Attorney in such a casual manner. Mr. Hibberd acknowledged that cases in the nature of child abuse were serious cases. He said it was "a heinous offence." In retrospect Mr. Hibberd felt that a charge laid under section 40 of the Act should be accorded investigation and preparation on a scale similar to that accorded to cases to be presented in the County Court of the County of Lambton or in the Supreme Court of Ontario. It was clear to me that this case was not so investigated and prepared.

Mr. Lang was aware of the matters required to be proven to support a finding of guilt upon the charge as laid.

That it was not necessary to prove the identity of the person or persons who directly caused the injuries to Kim was a major factor in his consideration and discussions with members of the Sarnia Police Force and the ultimate decision as to the appropriate charge or charges to be laid. But Mr. Lang appeared to give that factor no consideration when he received, considered and discussed Mr. Higgins' letter of February 10, 1976 and eventually instructed Mr. Hibberd, as I presume he did, even though Mr. Hibberd does not recall it. I do not make any finding as to the date or time of that instruction.

Even on Mr. Lang's testimony there is no real indication of the depth of Mr. Lang's instruction to Mr. Hibberd.

There was no mention of any memorandum of law that might be useful to Mr. Hibberd. Having been in the Provincial Court (Criminal Division) of the County of Lambton in October and November, 1975 when the jurisdiction of the judge presiding in that court to hear the case was successfully challenged, Mr. Lang should have known there might have been other intricacies or peculiarities of which Mr. Hibberd should be advised.

There was no testimony that Mr. Lang had informed Mr. Hibberd of a number of matters. These included Mr. Lang's discussions and considerations with members of the Sarnia Police Force before deciding to proceed under section 40 of the Act rather than under the Criminal Code and the basis for the ultimate decision as to the nature of the charge and proceedings.

Another such matter was Mr. Lang's assumption that both the charge under section 40 of the Act and the Society's application were to be heard on the same day and the concerns he would have had and the inquiries he would have made if that were not to occur.

Another was Mr. Lang's belief or expectation as to the nature and extent of the acknowledgement of responsibility for Kim's injuries to be expressed in Court by or on behalf of Annals Popen.

Perhaps because of the short notice he had, whether it was from "4:30 p.m. one day" or 1:00 p.m. on February 23, 1976 is of little consequence, Mr. Hibberd was unable to prepare properly for trial.

He could not recall that he had reviewed section 40 of the Act before the trial.

I do not believe that on February 23, 1976 Mr. Hibberd was aware of the matters required to be proven to support a finding of guilt upon a charge thereunder.

I do not believe he had in any substantial way discussed the matter with Police Constable Wyville. He testified that he had spoken with Police Constable Wyville. That was based on his own testimony that he would not, as a matter of his own invariable practice, withdraw a charge unless he first discussed it with the investigating officer so as to obtain that officer's opinion before deciding upon such a course. He said he would not withdraw a charge if he felt that withdrawal would not achieve justice. If Mr. Hibberd was unaware of the elements of the offence, as I believe he was, essential factors would be missing from any such discussion and decision.

Mr. Hibberd certainly had not been made aware of any suspicions that anyone had as to Jennifer Popen's responsibility for Kim's injuries. Mr. Lang was not aware of it. Mr. Hibberd testified that, had he been aware of the strong suspicion that Jennifer Popen was the one who assaulted Kim, he would not have withdrawn the charge against Jennifer Popen.

He accepted Annals Popen's plea of guilty as being an acknowledgement that Annals Popen had directly injured Kim. He was in error in so doing. The plea was merely an admission that Annals Popen had failed to protect Kim. The remarks by Mr. Higgins following the plea do not enlarge upon that.

Indeed they minimize Annals Popen's responsibility and tend to confuse the issue.

Mr. Hibberd accepted that plea as an effective bar to a finding of guilt against Jennifer Popen. Again he was in error in so doing. Jennifer Popen could have been guilty of the offence of failing to protect Kim notwithstanding Annals Popen's plea.

Mr. Lang's testimony was that charges laid under the Act were, in 1976, tried as summary conviction offences. He said that under section 12(1)(e) of The Crown Attorneys Act, the Crown Attorney was empowered and required to intervene in and to conduct the proceedings in respect of any charge, by whomsoever laid, alleging the commission of any offence against a provincial statute punishable upon summary conviction if, in the opinion of the Crown Attorney, the public interest so required.

Mr. Lang's testimony was that, while he was aware of charges having been laid under section 40 of the Act, he was not aware of any earlier case in which both parents had been charged with the same offence at the same time. He said that in all earlier cases under section 40 of the Act, during his tenure of Office in the County of Lambton from January 31, 1972, his Office had appeared.

That testimony makes it all the more surprising that a case so unusual and serious as was the case against Annals Popen and Jennifer Popen was not more carefully handled by the Office of the Crown Attorney prior to and at trial.

If the Crown Attorney or a member of his staff had appeared upon all charges under section 40 of the Act over the preceding several years, the Crown Attorney and his staff should have been aware that the Act required such charges to be heard by a provincial judge presiding in a provincial court (family division). The case should not have been scheduled for trial in the Provincial Court (Criminal Division) of the County of Lambton. Certainly when Mr. Higgins raised the issue on October 30, 1975 it should have been resolved quickly and the adjournment to November 13, 1975 for resolution of that issue was unnecessary. It would almost seem that no one in

Court on October 30, 1975 had a copy of the Act with him or her. In the alternative, it would seem that Mr. Lang had forgotten or overlooked the specific requirement of the Act, otherwise he would have consented to Mr. Higgins' application to transfer the case to the Court.

On Mr. Hibberd's testimony, Mr. Lang was engaged upon a trial in the Supreme Court of Ontario which had just begun. Thus it would seem that it was not likely that he would have been in a position to appear upon this matter even on February 25, 1976. From the memorandum from his staff seeking advice as to representation on February 23, 1976 and the panic created by the situation, it would seem that at least the clerical portion of the staff in the Crown Attorney's office was not aware of the assignment of the case to Mr. Hibberd and, perhaps until that day, was not aware of the need for representation upon the trial. I gathered that a reminder had come to the Crown Attorney's office from the administrator of the Court.

It would seem that, at least until March, 1976, the Office of the Crown Attorney did not have sufficient barristers on its full-time staff to enable adequate preparation and presentation of serious cases in provincial court. For the most part a Crown Attorney did not appear in the Court unless specifically requested by the Judge presiding therein or unless the Office of the Crown Attorney otherwise became aware of a trial in the Court involving a charge punishable on summary conviction and which, in the opinion of the Crown Attorney, was of such a nature that the public interest so required.

While Mr. Lang testified that his Office had appeared upon all charges under section 40 of the Act since his appointment in 1972, he did not state the basis for that testimony. There was no suggestion that he had made any search of the records of the Court to ascertain what charges under that section had been heard.

The section seems to apply to a broad range of circumstances, from cruelty to failure to protect and thence to failure to support. Thus it would seem that charges thereunder might be laid by a variety of persons and might result from widely different factual circumstances.

In some extreme cases, as here, a police force may be involved and the charge be laid by a police officer. In such a case it is reasonable to suppose that the police officer or his superiors would advise the Office of the Crown Attorney and request that Office to assume responsibility for the conduct of the proceedings. It is similarly reasonable to suppose that the Crown Attorney would accede to that request.

In other less serious cases, perhaps where a father has deserted his family and refused or neglected to support a child, the mother of the child may lay the charge and it may proceed entirely as a private prosecution. That would be so unless either the mother or the judge presiding in provincial court (family division) advised the Crown Attorney and sought and obtained his agreement to assume responsibility for the conduct of the proceedings or unless the Crown Attorney learned of the charge and determined that it merited his intervention.

There may be instances where an employee of a children's aid society or a similar organization may lay the charge and the staff of that association or organization may conduct the proceedings with reference thereto. The existence of that charge would likely come to the attention of the Crown Attorney only at the instance of the society or others organization or the judge presiding in provincial court (family division). Again the Crown Attorney may learn of it in some other way and determine to intervene.

There was no evidence as to the criteria employed by the Judge presiding in the Court to determine whether or not a matter in the Court would be brought to the attention of the Crown Attorney. Nor was there any evidence as to the stage of the proceedings at which the Judge might decide to request the Crown Attorney to intervene.

There was no evidence as to the criteria employed by Mr. Lang and his staff in determining whether or not his Office should assume the conduct of any proceedings resulting from a charge laid under section 40 of the Act.

I have no doubt the Crown Attorney would assume responsibility for the conduct of the proceedings in any case of which he became aware and which involved injuries as serious as those suffered by Kim at various times during her lifetime. That would be so regardless of by whom the charge was laid.

I have no doubt the Crown Attorney would assume responsibility for the conduct of the proceedings in any case in which the judge presiding in provincial court (family division), or any police officer or any employee of a children's aid society or similar organization requested him to assume the conduct of the proceedings. That would be so regardless of by whom the charge was laid.

Apart from those two general categories of cases I am uncertain as to the decision that the Crown Attorney might reach in any particular case alleging a breach of section 40 of the Act and of which the Crown Attorney may have become aware.

Continuing to comment upon Mr. Lang's testimony in this area, I note he did not state the number of charges under section 40 of the Act upon which he or his staff had appeared. He did not state how his Office had learned of any such charges. He did not state the general nature of the allegations in those charges.

I recall the evidence of Dr. Singh and employees of the Society that there had been few reported cases of child abuse in Sarnia and the County of Lambton in the years preceding Kim's case. There was no evidence as to how those cases had been treated, whether by charges laid or otherwise, and, if by charge, whether the charge was laid by a police officer and whether, in any event, the proceedings with reference thereto were conducted by the Crown Attorney.

I wonder too if the witnesses testifying to that effect upon the Inquiry were using a limited or restricted definition of child abuse, perhaps limited to cruelty or ill-treatment, rather than the broader definitions suggested in section 40 of the Act or in the testimony of Dr. Bates and others upon the Inquiry.

While I have expressed criticism of the Office of the Crown Attorney in its handling of the proceedings, I feel that the matters which I have criticized had little, if any, effect upon the development of the ultimate tragedy. They came about largely because of the heavy demands upon Mr. Lang and Mr. Hibberd. The pressures created by the multitude of duties of the office contributed to the failure of Mr. Lang and Mr. Hibberd to give to the case the careful attention it deserved and required.

The failure of the Sarnia Police Force and the Society to advise Mr. Lang of the suspicion held or suggestion made by some employees of the Society and by Dr. Jumean that Jennifer Popen was directly responsible for Kim's injuries deprived Mr. Lang and Mr. Hibberd of information which, I believe, would have affected Mr. Lang's initial decision to withdraw the charge under section 40 of the Act against Jennifer Popen and Mr. Hibberd's ultimate decision to do so when he appeared in Court on February 23, 1976.

From the testimony of both Mr. Lang and Mr. Hibberd, I am satisfied that if either of them had been aware of any such suspicion or suggestion as to Jennifer Popen's involvement, he would not have been prepared to withdraw the charge against her unless and until he was satisfied by full inquiry that the suspicion or suggestion was unfounded.

I am satisfied that neither Mr. Lang nor Mr. Hibberd would have felt that the ends of justice would be served by accepting Annals Popen's plea of guilty and withdrawing the charge against Jennifer Popen if he were aware of that suspicion or suggestion and if, after consideration of all of the information which would be known then to the Sarnia Police Force and the Society upon proper investigation, he were of the opinion that the suspicion or suggestion might have some substance.

Thus I am satisfied that if Mr. Lang had received all of the information known to the Sarnia Police Force/ he would not have instructed

Mr. Hibberd to withdraw the charge against Jennifer Popen.

From the testimony upon the Inquiry, I gather that some of the pressure upon the Office of the Crown Attorney was relieved by the appointment of a second full-time Assistant Crown Attorney after Kim's death. It was not suggested that that appointment came about in any way because of Kim's death. It was merely the recognition by the Government of Ontario, as represented by the Attorney General, of the tremendous workload carried by Mr. Lang and Mr. Hibberd and the resulting pressures upon them.

While consideration of some of the events which occurred shortly after Kim's death would not appear to be within the terms of the Ministerial Order appointing me to conduct this Inquiry, I have commented upon them elsewhere in the Report and do so here as well insofar as they tend to indicate the policy and practice of the Office of the Crown Attorney during Kim's lifetime.

Mr. Lang testified that he became aware of Kim's death when that information was given to him by the Sarnia Police Force on Thursday, August 14, 1976. Again Mr. Lang's memory is quite clear. But August 14, 1976 was a Saturday. From later testimony I am satisfied that he was informed on Thursday, August 12, 1976 that Kim had died the previous evening, August 11, 1976.

I am satisfied that Mr. Lang was aware that the dead child, Kim, was the child whose parents had been charged in September, 1975 with the offence against section 40 of the Act. Mr. Lang was told that the Sarnia Police Force had some suspicions as to the circumstances surrounding her death and had begun, but not completed, an investigation with reference thereto.

I am satisfied that Mr. Lang was then aware that Kim's parents had a younger child, now known to be Karie. Mr. Lang testified that he was not aware that that child, Karie, remained in the family home after Kim's death. He did not testify that he had made any inquiry on August 12, 1976 as to the whereabouts of Karie. Other testimony indicates that he did not make such an inquiry. In my view he should have. Kim's death under circumstances which aroused the suspicions of the Sarnia Police Force and the knowledge Mr. Lang had of her earlier history and injuries and of the charge under section 40 of the Act against her parents should have made Mr. Lang at once aware that Karie might be in need of protection. Mr. Lang should have taken immediate steps to ensure that protection.

Mr. Lang went on to testify that the following day, Friday, which he said was August 15, but was in fact August 13, 1976, Dr. McKinley, an experienced coroner in the County of Lambton, came to him to express great concern as to the care of Karie. Mr. Lang testified that it was only then that he learned that Karie was still in the family home.

Mr. Lang testified that Dr. McKinley said that something had to be done and that Karie had to be removed. He testified that he readily agreed with Dr. McKinley that "the danger was just too great" and that "we couldn't wait to see what was going to happen." I am not sure to whom Mr. Lang referred by his use of the pronoun "we."

Mr. Lang testified that in his opinion that child "was in need of protection right then." By his use of words in the same juxtaposition as they appear in the Act I am sure Mr. Lang was thinking of the child as being a child in need of protection within the meaning of the statute.

Mr. Lang testified that he immediately telephoned the Society. I am satisfied, on Mrs. Harvey's testimony, that he spoke with her. For ease of construction I shall write now as if Mr. Lang testified to that same effect although he did testify that he was not sure of the identity of the person to whom he had spoken.

His testimony was that he insisted that Karie ought to be removed, but that Mrs. Harvey demurred because no charges had been laid and, she said, the Society could do nothing until a charge was laid. He said he told Mrs. Harvey that it might be too late for Karie if no action was taken to protect him before a charge was laid. He said he told Mrs. Harvey that the Sarnia Police Force and he had not completed the investigation and did not know what might come of it. He said that at the conclusion of that conversation at about 3:30 p.m. he was satisfied that Karie would be removed that day.

In his testimony Mr. Lang did not indicate that he was aware of the provisions of the Act, particularly section 21 of the Act, which would have enabled any police officer as well as any worker in the employ of the Society to remove the child. As I read section 21 of the Act the employees of the Society were no more entitled to remove the child than were members of the Sarnia Police Force. Perhaps in the circumstances, if one can establish grades of entitlement under section 21, a police officer conducting the investigation into Kim's death might have had greater reason to feel that there were reasonable and probable grounds to believe that the child was apparently in need of protection.

There was no evidence to indicate that Mr. Lang had considered and discussed with the Sarnia Police Force the provisions of section 21 of the Act and the possibility of the removal of the child from the family home by the Sarnia Police Force.

Thus in my view Mr. Lang may be criticized for not having considered on August 12, 1976 the safety of that younger child. He was aware of that child's existence. He should have made immediate inquiry of the Sarnia Police Force as to the child's whereabouts and circumstances. I am certain he would have been told at once that the child was still in the family's care and home. He should then have immediately considered whether the child might be in need of protection. On the next day he was quick to "insist" that the Society remove the child. That he was able then to express such insistence leads me to believe that there was no reason why, on August 12 and on August 13, 1976, he could not have advised the Sarnia Police Force of his opinion that there were reasonable and probable grounds to believe that that child was apparently in need of protection and that therefore the child should be taken to a place of safety by the Sarnia Police Force.

My observations in the immediately preceding paragraph must be tempered to the extent that I acknowledge the practical difficulties that would arise from such advice by a Crown Attorney to a municipal police force.

I doubt that any municipal police force or the Ontario Provincial Police or the Royal Canadian Mounted Police in Ontario has any facility to care for infant children for any prolonged period of time. I understand that whenever a police officer does apprehend a child as being a child apparently in need of protection, the child is placed in the care of the local children's aid society or some similar agency at the earliest opportunity, probably within minutes or a few hours of the time of apprehension regardless of the time of day.

Thus if the local children's aid society had indicated an unwillingness to accept the child, the police force might then be called upon to arrange for the child's care for some lengthy time. Versatile as police officers may be in the performance of their duties, they are not equipped or trained to provide or even to arrange and thus supervise care for infants for any extended period of time.

Mr. Lang's approach wherein he urged the Society to fulfill its mandate was a practical approach, but he took it one day later than he should have.

This had no bearing upon the life and death of Kim. It is perhaps only an indication of the lack of familiarity of the Crown Attorney and his staff with the Act, a lack of familiarity which perhaps contributed to the less than satisfactory conduct of the proceedings in the Court under section 40 of the Act.

Chapter XXIV

The Role of the Provincial Court (Family Division) of the County of Lambton

The Provincial Court (Family Division) of the County of Lambton, hereinafter in this Chapter called the "Court," had a heavy responsibility in two matters affecting Kim's life. The first of those matters was the charge laid against Annals Popen and Jennifer Popen alleging that they had failed to protect Kim in 1975. The second was the application made by the Society for an order declaring Kim to be a child in need of protection and placing her in the care of the Society. Both matters involved The Child Welfare Act.

During Kim's lifetime, His Honour Judge Quincy Lloyd Nighswander was appointed to sit in the Court and in the Provincial Court (Family Division) of the County of Kent. He was the lone provincial judge sitting in the family division of the provincial courts in those counties. He divided his time approximately equally between the two counties. He was extremely busy. The lists of matters for hearing were long.

Mr. Higgins in his testimony upon the Inquiry said:

> "Now you must remember that in those days, [February 1976], Judge Nighswander was in Sarnia two days a week and Chatham two days a week. He had to divide himself between two counties and he sat nowhere apparently on Fridays, so the most we had was two days a week and his time was very valuable and we had to pick and choose when there would be a few minutes to deal with a quick matter which is what I thought this would be apparently."

Judge Nighswander while testifying upon the Inquiry, was asked a number of questions with reference to the Court's case load. Those questions and the responses thereto were as follows:

> "Q. I suppose Your Honour, you've had in your court when you were sitting that there was a tremendous case load for Your Honour to deal with all of these matters?
>
> A. Let's say there was a tremendous case load for the court and we ran three months behind frequently. This bothered me as an individual, but I dealt with as much as I could in the day and didn't try to deal with any more. The real disadvantage of that was to the people who had to come to court rather than the judge.
>
> Q. Was there a three month delay, Your Honour, in the court dealing with matters under the Child Welfare Act?
>
> A. If it was going to be an opposed application, it could be, I'm making three months as a general statement, everything wasn't that far behind, but some cases were, in all aspects of the court. Frequently children charged with an offence at the time, wouldn't appear for the first time for two months, there just wasn't time to hear it, there was no time in the docket. Children's aid matters I gave the highest priority, I laid down a priority - children first adults second, so children's aid matters were, because of the need for a quick decision as quickly as possible, I tried to, but even then it wasn't possible."

That testimony by Judge Nighswander was a confirmation of remarks he made during various proceedings in the Court. It and they demonstrated the heavy load the Court and he bore and his interest and concern for those affected by proceedings in the Court, especially the children. It and they also demonstrated the futility of his best efforts.

Elsewhere in the Report, I have reviewed in a general way the manner in which the two matters involving Kim proceeded in the Court. Schedule 2-A to the Report shows the dates of the various proceedings. In this Chapter I shall confine the review to those areas in which the facilities of the Court affected the conduct of those proceedings.

The first proceeding in the Court was on September 8, 1975, when Mr. Lovatt presented the Society's application for wardship. As might reasonably be expected, both Mr. Lovatt and Mr. Higgins' law clerk, Mr. Ian Harvey, who appeared on that day on behalf of Annals Popen and Jennifer Popen, were not prepared to proceed. Mr. Lovatt advised the Court that the Society would seek an order placing Kim in its care for six months. Mr. Harvey said the the application would be contested.

There then were a series of comments by Judge Nighswander and others which are of importance to this Inquiry. The first such comment was by Judge Nighswander and was:

> "Well, if the application is to be opposed, we should set the date now so everybody knows where we are going and don't need a whole lot of adjournments."

That was an indication that Judge Nighswander sought to ensure the selection of a date for hearing without the waste of time of the Court and the parties that would be involved if there were a number of adjournments.

As it developed circumstances thwarted Judge Nighswander.

When Judge Nighswander inquired, he was informed that the Society would require a month for preparation for the hearing which might require two hours in Court.

Thereupon Judge Nighswander said:

> "Well, the earliest time would be the 29th of October, and I am going to take time on a Wednesday for it."

The matter was adjourned accordingly. Mr. Harvey inquired about the possibility of Annals Popen and Jennifer Popen having visits with Kim in the intervening time. Judge Nighswander responded:

> "This is something that I would have to leave between the agency and the police. Now, it is not beyond the realm of possibility between now and then that an alternative possibility may develop, or is there --- if something should develop to make this lengthy court hearing unnecessary, please let us know because I am going to reserve all the rest of that day, which means a whole bunch of children are going to wait; but this is a child too. I must say that I regret very much that there is no court time before then, but it's entirely out of my hands."

That was one statement showing Judge Nighswander's concern for the welfare of children affected by proceedings in the Court. It was a further effort by him to ensure that the time available for the sittings of the Court was fully and productively used. It was a statement that matters were waiting to be heard and that, for reasons beyond Judge Nighswander's control, the Court could not provide time for them to be heard.

From time to time during the Inquiry persons skilled and experienced in social work involving child welfare spoke of the need for expeditious handling of cases involving children. They said that would be beneficial to all concerned, particularly the children affected. Parents or guardians of the children and the children's aid society would know their respective positions in relation to the children. If the result was to place a child in the care of a children's aid society, that society could, with knowledge of the terms of the order, properly prepare its plan for the care of the child. Without such knowledge it would be imprudent to prepare any such plan. Any plan for the child's care would be dependent upon the terms of the order ultimately made.

In this instance, by reason of the Court's full schedule, Judge Nighswander was forced to adjourn the matter for over seven weeks, about three weeks longer than was required by the Society for preparation for the hearing.

The matter next came before the Court on October 29, 1975. At that time Mr. Higgins sought an adjournment because of his commitments in another court and because the charge alleging that Annals Popen and Jennifer Popen had failed to protect Kim had been laid and they were to appear in the Provincial Court (Criminal Division) of the County of Lambton on October 30, 1975. Mrs. Harvey, appearing for the Society, did not oppose the adjournment. Judge Nighswander was prepared to grant it.

In announcing his intention to grant the adjournment, Judge Nighswander said:

> "I should mentioned one thing to you, Mr. Higgins. It will be certainly in December or early January before we can proceed.
>
> Now, I can...I am going to grant the adjournment for two reasons. One, that the children themselves (sic) will remain in the care of the Children's Aid until the matter is completed. Secondly, I consider a wardship matter one of the most serious matters that comes before the Court, and it's important that both sides have every opportunity of adequate preparation and ability to present their side of the matter, so that I am going to grant the adjournment. It's a question now of picking a date."

That was another statement of concern by Judge Nighswander for the persons appearing in the Court or affected by the proceedings in the Court. He showed that he believed that matters involving the wardship of children were among the most serious matters to come before the Court. The wisdom of that belief is self-evident.

That statement, coupled with the proceedings in the Court on September 8, 1975, provides some assistance to measure the pressure upon the Court's time. On September 8, 1975 one of the most serious matters to be dealt with by the Court could not be scheduled for hearing earlier than October 29, 1975, about seven weeks in the future.

During discussion as to the length of the adjournment to be granted, Mr. Higgins sought to ensure that the adjournment would be such as to ensure that the hearing could begin early enough in the day to enable its completion on that same day.

Mr. Higgins said:

> "I have seen several cases recently, you know of them, that we started in the afternoon and didn't finish. I find that most unpleasant, to have to go back two months later and have to remember what happened. It must be extremely difficult..."

Judge Nighswander responded as follows:

> "I have a full day on Monday on the 19th of January. It's a terribly long time."

and, after a comment by Mr. Higgins, Judge Nighswander continued to say:

> "Yes, certainly the Court is interested in it being speeded up, so I will adjourn this to the 19th of January, 10:00 a.m. and I will set the whole day for it."

The matter was then adjourned to January 19, 1976, a date almost twelve weeks in the future.

I infer from Mr. Higgins' comment that adjournments of up to two months even after trials or hearings had begun were not uncommon. In this instance the Court was unable to assure the availability of sufficient time earlier than twelve weeks in the future.

Again one of the most serious matters within the Court's jurisdiction had to be adjourned for "a terribly long time" to use Judge Nighswander's words.

Each adjournment of the hearing resulted in an equivalent delay in the management of Kim's case by the Society. Mr. Carter was not doing the normal case work. Each adjournment had an effect upon Kim's life.

By November 17, 1975, the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act alleging their failure to protect Kim had been transferred from the Provincial Court (Criminal Division) of the County of Lambton to the Court. On November 19, 1975 the trial of that charge was adjourned to January 19, 1976.

Thus both matters in the Court affecting Kim were scheduled to be heard on the same day.

On January 19, 1976, both matters were adjourned because of the absence of Dr. Singh, an essential witness in each matter, on behalf of the Crown in connection with the charge against Annals Popen and Jennifer Popen and on behalf of the Society in connection with its application.

Mrs. Harvey, appearing for the Society, apparently wished to present the application and the evidence save and except Dr. Singh's testimony. Mr. Higgins opposed that suggestion. In stating his position he said, in part, that an adjournment "means we would be back here six, eight, ten weeks from today," and then:

> "We have had experience here before of having cases split before for six to eight weeks, and it's very difficult for counsel."

Those were statements similar in effect to what was said on earlier occasions. Even an interruption of a trial would entail a lengthy adjournment. Neither Judge Nighswander nor Mrs. Harvey disputed either statement.

In the same discussion when Judge Nighswander suggested that a whole day should be reserved, Mr. Higgins said that two days might be required. He said that if the hearing were to begin, but not completed that day, January 19, 1976, he wanted to be able to continue on the next day.

Judge Nighswander's response to that was:

> "Well, I can assure you we would not be in a position to continue tomorrow, because the Court is all tied up tomorrow in another place."

Later in the discussion Judge Nighswander again showed his recognition of the importance of the proceedings. He said:

> "Now, we are dealing here with a matter which in my point of view is the most serious kind of matter that ever comes before this Court, and that is to determine whether or not a child is in need of protection. This is a serious matter for a child and a serious matter for the child's welfare."

That adjournment from January 19, 1976 came about through no fault of the Court. Indeed the Court was a victim. The Court's entire facilities were available for the hearing of the Society's application and the trial of Annals Popen and Jennifer Popen upon the charge under section 40 of The Child Welfare Act. Mr. Higgins learned of Dr. Singh's absence only minutes before the Court opened that morning. The Court learned of it only when the matters were called in Court.

It is not specifically stated in the transcripts of that day's proceedings in the Court, but it seems to be implicit in some of the remarks that, as a result of the adjournment, the Court's facilities could not be fully utilized that day. Counsel, parties and witnesses involved in other matters not scheduled for trial or hearing that day could not be expected to be available on such short notice.

The Society and the Office of the Crown Attorney did a disservice to the Court, to other persons involved in other matters before the Court and, most importantly for my present purposes, to Kim.

In discussion as to when the matters might be heard, Mrs. Harvey said that Dr. Singh would be available early in February. Thereupon Judge Nighswander said:

> "Well, early in February is not possible since there is no court time available early in February. Now, first we will pick the earliest date that we have a whole day available. Now, the earliest Monday is the 29th of March. Now the earliest...now there's two...there are two cases set for the afternoon for first hearing, and I can arrange to have them cancelled on the 25th of February. We have a full Wednesday on the 25th of February, or the 10th of March. Now, are both those dates...and I will certainly recess to give both parties time to make phone calls if they need to."

That again illustrates the heavy load borne by the Court and Judge Nighswander.

After January 19, 1976 the first Monday for which the Court was not committed was March 29, 1976, about ten weeks away. Judge Nighswander could make Wednesday, February 25, 1976, about five weeks away, available, but that would involve "cancelling" two other matters which had been scheduled for "first hearing." The next available Wednesday was on March 10, 1976, about seven weeks away.

In the end result, both matters were adjourned until February 25, 1976.

As a result of discussions and correspondence, particularly between Mr. Higgins and Mr. Lang, Crown Attorney for the County of Lambton, the date for the trial of Annals Popen and Jennifer Popen upon the charge under section 40 of The Child Welfare Act was advanced from February 25, 1976 to February 23, 1976. I have dealt with that series of events in quite some detail elsewhere in the Report, particularly in Chapter VIII, a review of events in Kim's life from September 5, 1975 to February 25, 1976, and in Chapter XXIII, a review of the role of the Office of the Crown Attorney in Kim's life.

I infer that the change in the date for that trial was made with the concurrence of the administrative staff of the Court. There was no direct evidence to that effect.

The transcripts of portions of the proceedings in the Court on February 23, 1976 which were available to the Inquiry do not indicate that Judge Nighswander was in anyway surprised to find the trial of Annals Popen and Jennifer Popen on his list of cases or matters for that day and at that particular time of day, 1:30 in the afternoon.

That the Court, on very short notice, probably less than one week, was able to accommodate Mr. Higgins and the Crown Attorney demonstrates the desire of the Court to deal as expeditously as possible with serious matters. Admittedly, by this time counsel were in a position to have indicated that, subject only to Judge Nighswander's view of the appropriateness of the submissions to be made, the trial, apart from the imposition of sentence, would require perhaps as little as ten minutes.

In other areas of the Report, particularly where I discuss the roles of Mr. Higgins, the Sarnia Police Force and the Office of the Crown Attorney, respectively, and in Chapter VIII where I review events in Kim's life about that time, I have noted that only a relatively small part of the evidence available was presented upon the trial. The material read into the Record of the trial by Mr. Hibberd, the Assistant Crown Attorney, was sufficient to satisfy Judge Nighswander.

On his plea of guilty, Annals Popen was found guilty of the charge. On her plea of not guilty and in the absence of evidence against her, Jennifer Popen was found not guilty. A pre-sentence report was ordered and Annals Popen was remanded out of custody to March 29, 1976 for sentence.

The application of the Society for an order in respect of Kim came on for hearing as scheduled on February 25, 1976.

In other portions of the Report, particularly Chapter VIII, mentioned in the preceding paragraph, and Chapter XIV, in which I review Mrs. Harvey's role in Kim's life, I have set forth comments upon the proceedings on that day.

The evidence presented upon that application enlarged somewhat upon and included the summary read by the Assistant Crown Attorney which had constituted the evidence against Annals Popen on his trial two days earlier. The entire evidence presented in Court on behalf of the Society was virtually the minimum required to enable Judge Nighswander to find that Kim was a child in need of protection. It was not all of the evidence available to the Society at that time.

Notwithstanding any shortcomings in the presentation of the application, Judge Nighswander was able to decide that Kim was a child in need of protection. Notwithstanding the absence of submissions following the presentation of evidence and notwithstanding Mrs. Harvey's statement that the Society sought an order placing Kim in its care for only two months, Judge Nighswander was able to discern that two months was not a sufficient period of time; so he placed Kim in the care of the Society for a period of six months. That was in accordance with the statements made on behalf of the Society on earlier appearances in the Court.

It was probably more in accordance with Mrs. Saul's preliminary assessment in June, 1975 with which Mrs. Harvey had agreed. Despite a very short encounter with the Popen family, Mrs. Saul reported orally to Mrs. Harvey, in part, as follows:

> "A. Yes, and with Mrs. Harvey I went into the situation in much more detail, because I felt that this situation should be transferred on immediately rather than sit or stay with me as the investigating worker. This transfer on immediately was sometimes done within the agency because my role in the agency was that of a short term worker and I did initial investigations and what we call short term counselling, that hopefully I wouldn't become involved in a situation very long, but when you have a situation where it was very obvious that involvement with the agency and this particular family would be a long term, very often or sometimes a case will be transferred on at that point.
>
> Q. Right immediately?

> A. Yes. And so I recommended that the case be transferred on immediately, and why, and Mrs. Harvey agreed with me that this case definitely needed to be transferred to a long term worker and she mentioned that the case would be transferred to Mr. Carter and that's where I left the situation."

In that absence of submissions Judge Nighswander was called upon to deliver judgement in a sort of vacuum. The oral judgement which he immediately delivered was variously described by witnesses upon the Inquiry. Those were persons who, in my opinion, by reason of their own training and skills and experience were qualified to compare the force or strength of that judgement with that of other judgements upon applications similar in nature to that of the Society. In brief they regarded it as being a strong judgement.

In my opinion it was a strong and forceful statement of Judge Nighswander's concerns for Kim's safety and for improvement of conditions in her home before she was again entrusted to the care of her parents.

A copy of Judge Nighswander's reasons for judgement are reproduced as Schedule 2-H to the Report. While it is the strong and forceful statement I have described, when it is read in the light of the evidence upon the Inquiry, it discloses how, by reason of the shortcoming of the presentation of the application and the evidence in support thereof, he was misled. His attention was diverted from Jennifer Popen and was directed towards Annals Popen.

As Judge Nighswander testified upon the Inquiry, the basic issue upon the hearing was the determination of Kim's need for protection. It was not necessary to determine the identity of whoever caused her injuries.

I infer that, because his attention was directed towards Annals Popen as the abusing parent, his remarks as to the nature of improvement to be required in the Popen home related primarily to Annals Popen and his alleged problem with alcohol.

I infer that because his attention was diverted from Jennifer Popen he expressed no comment as to any improvement in or treatment of her.

I infer that had Judge Nighswander heard the testimony which was presented upon the Inquiry and which related to events on and before August 31, 1975 and which therefore was available to be presented in the Court on February 25, 1976, his judgement would have been enlarged to express comment or impose terms requiring assurances that Jennifer Popen would receive treatment to ensure that she did not again injure Kim.

After judgement was delivered on February 25, 1975, the only proceeding in the Court was on March 29, 1976 when Judge Nighswander imposed sentence on Annals Popen upon the charge under section 40 of The Child Welfare Act. Sentence was suspended and he was placed on probation for one year on the special terms that he

> "totally abstain from drinking alcoholic beverages and take treatment for his alcoholism."

It is a credit to the Court and to Judge Nighswander as an individual that, on his own initiative pursuant to the specific provision of section 25(2) of The Child Welfare Act, he required Jennifer Popen to testify. It was while she testified that the explanations for Kim's various injuries were shown to be unworthy of belief.

Nonetheless, a disservice was done to the Court and Judge Nighswander. Judge Nighswander was led to believe that Annals Popen had caused some of Kim's injuries. The learned judge was led to believe that Jennifer Popen was the innocent spouse of a man who, perhaps as a result of consumption of alcohol, injured their child. Apart from whatever might have been inherent in her plea of guilty upon her trial for manslaughter in December, 1977, it was not until she testified upon this Inquiry and upon the new trial of Annals Popen for manslaughter in December 1981, that Jennifer Popen acknowledged her responsibility for some of the injuries to Kim, including those which Judge Nighswander had been led to believe had been caused by Annals Popen.

Judge Nighswander, before his appointment as a provincial judge in 1968, had had considerable training and experience in social work, including work in children's aid from 1948. For three and one half years he was the Local Director of the Children's Aid Society of the County of Kent. He was a knowledgeable and experienced provincial judge.

By reason of the small amount of evidence tendered and the absence of submissions by Mrs. Harvey and Mr. Harvey upon the Society's application, he was required to draw upon his own resources of knowledge and experience. In his testimony upon the Inquiry, Judge Nighswander said that in any proceeding such as the Society's application in respect of Kim, the first issue to be resolved is whether or not the child named in the proceeding is a child in need of protection within the provision of The Child Welfare Act. If that is resolved in the affirmative, three ultimate dispositions of the matter are available to the Court.

He testified that the identity of the person or persons who caused injury to the child is not an element in the determination of the issue as to the child's need of protection.

The three dispositions which might be made when a child has been found to be a child in need of protection are an order making the child a ward of the Crown, an order making the child a ward of a children's aid society for a stated period of time and an order empowering a children's aid society for a stated period of time to supervise the child while the child remains in the care of his or her parents or guardians.

Judge Nighswander testified that normally, as in Kim's case, when a child is removed from the family by a children's aid society the initial application by the children's aid society is for an order making the child a ward of the children's aid society for a stated time. That is intended to enable the children's aid society to have time to consider whether or not there is improvement in the family circumstances or some indication that such improvement might come about.

Judge Nighswander testified that he had informed the Society that if an appropriate application was not made to the Court to extend the period of wardship or to replace it with an order for supervision by the Society, any order making a child a ward of the Society would, by effluxion of time, expire at the end of the period stated in the order.

In his testimony upon the Inquiry, as he had done upon the hearing of the Society's application on February 25, 1976, he emphasized that, notwithstanding any submission by or on behalf of the children's aid society or the parents of the child, and notwithstanding any consent of those parents to any submission, the selection of the appropriate disposition rests only with the provincial judge sitting in provincial court (family division).

In his testimony, Judge Nighswander said that upon applications, such as that presented by the Society in respect of Kim on February 25, 1976, a mere summary, such as would support a finding of guilt upon a plea of guilty in criminal proceedings, would not be sufficient to ensure the success of the application even it if were not opposed, as by the parents of the child. It was for that reason that he wanted Jennifer Popen to testify, but he could not remember any specific concern he had had.

That testimony by Judge Nighswander supports my view as to the nature and weight of the evidence presented by the Society. It was minimal. It was no more than a "summary" if I may use Judge Nighswander's word.

From Judge Nighswander's testimony and from the fact that he required Jennifer Popen to testify, I infer that the evidence presented by the Society might not have been sufficient to persuade him to grant the application by the Society or, if it were so sufficient, to enable him to determine the appropriate disposition upon granting the application to declare Kim to be a child in need of protection.

Judge Nighswander did testify that the statement of counsel on behalf of Annals Popen and Jennifer Popen, which Judge Nighswander interpreted to be a statement that they did not oppose the application, might be taken as tantamount to an admission that Kim was a child in need of protection and should be in the care of the Society. He said that might have influenced Mrs. Harvey's presentation of the application and thus led to her presenting less evidence or in lesser detail and less forcefully than if the application had been opposed.

As is apparent from his reasons for judgement, Judge Nighswander believed, and he so testified upon the Inquiry, there was reason to think that whatever problems had existed in the Popen household might be corrected, but two months was not a sufficient time to enable such correction.

Judge Nighswander was questioned as to the care of a child subsequent to an order declaring the child to be in need of protection and placing the child in the care of a children's aid society for a specific period of time. The question was particularly directed to the matter of the return of the child into the family home. His response was that the children's aid society is then fully responsible for the care of the child and the provincial court (family division), having made the order, has no jurisdiction to direct the children's aid society in any detail of that care. He said there was no requirement that the children's aid society return to the provincial court (family division) before returning the child even prior to expiration of the period of time set forth in the order. He did not regard an appearance in provincial court (family division) prior to the child's return as being general or usual practice.

A portion of Judge Nighswander's response to that area of questioning was transcribed as follows:

> "They [the children's aid society] are the child's parents during that time and they Have the same authority as ordinary parents do and they can place it with Aunt Mildred or whatever, their own child. Similarly the children's aid, so that they would not have occasion to consult the court if they had the full, unless they wanted to change the disposition."

While one or more words seem to be missing after the word "full" the meaning of the response is clear.

He expanded that response to say that, in his view, the Society in theory could have returned Kim to her parents immediately after he made the order on February 22, 1976. In his view the Society was entitled by law to do that. The example he gave in that enlargement was of a child in need of protection because of the serious illness of a parent who was returned to the family home when the parent's recovery was accomplished much more quickly than had been expected when the order was made.

In that area of his testimony, Judge Nighswander spoke of "a dramatic change in circumstances," presumably in the family's home. The example he had given would meet that criterion. Kim's case could not meet it.

Judge Nighswander was questioned about the application presented to the Court on August 4, 1976. It was an application for an order enabling the Society to supervise Kim's care.

Judge Nighswander distinguished that application from the one presented on February 25, 1976. At that time the Society sought to have Kim placed in its care and were successful. However, upon that application the Court might have left Kim in the care of her parents subject to supervision by the Society.

By its application presented on August 4, 1976, the Society merely sought the right to supervise Kim's care in her family's home.

Judge Nighswander testified that the results flowing from a supervision order were different from those flowing from an order placing a child in the care of a children's aid society. In the event of the latter type of order, the child is a ward of the children's aid society and, even if the children's aid society returns the child to the parents during the period of wardship stated in the order, the children's aid society has authority over the child while the order remains in effect.

He said a supervision order is sought if the children's aid society wishes legal authority to enter the child's home at its sole discretion. He suggested that an example of such a situation would be that conditions in the home have improved, but not sufficiently to satisfy the children's aid society as to the child's safety.

He said that normally an application for a supervision order, assuming it were to supercede or replace an order of wardship, is made prior to the expiration of the wardship order by effluxion of time.

Ontario

Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

His Honour
Judge H. Ward Allen

1982

VOLUME 3

Printed by A. P. Gordon, Queen's Printer for Ontario.

ISBN for complete set of 4 volumes: 0-7743-7734-8
ISBN for Volume 3: 0-7743-7737-2

Copies are available from:
Ontario Government Bookstore
880 Bay Street
Toronto, Ontario, for personal shopping.

Out-of-town customers write to:
Publication Services Section
5th floor, 880 Bay Street
Toronto, Ontario M7A 1N8
Telephone 965-6015
Toll free long distance 1-800-268-7540,
in Northwestern Ontario 0-Zenith 67200.

Cheques payable to the Treasurer of Ontario.

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Chapter XXV

The Role of Relatives, Neighbours and the Community in Kim's Life

The sittings of the Inquiry were widely advertised throughout the City of Sarnia and the County of Lambton and southwestern Ontario. Few members of the public attended any of the sittings. Representatives of the media were in regular attendance at the sittings and their reports were extensive.

Only three persons appeared entirely voluntarily to testify upon the Inquiry without having had some involvement with Kim's life either directly, as in the practice of a profession, or indirectly, as by employment or association with the Society or some other institution or agency. They were not neighbours or friends or relatives of Annals Popen and Jennifer Popen. They were concerned with what they perceived as implications of the matter extending beyond Kim and her family.

One was Robert Sharen, Reeve and head of the municipal council of The Village of Grand Bend in the County of Lambton, who spoke of his satisfactory relationships with the Society. The Society had been most helpful in connection with a proposed adoption of a child in 1976. He had been in municipal politics since 1973, but heard no complaints about the Society's operations prior to hearing of Kim's case, presumably in December, 1977.

He said the staff of the Society were very dedicated persons who were sometimes overtaxed. He understood there were shortages of both funds and staff, problems which he felt were not unusual among what he called "government agencies."

He said that Mrs. Harvey had been instrumental in developing a child abuse programme which had a broad basis of community involvement.

He expressed the opinion that responsibility for Kim's tragedy had to be borne by society generally and not only by the Society or certain of its staff.

Mr. Sharen made a number of comments which I regard as being recommendations for the improvement of services such as those provided by children's aid societies in Ontario. I deal with those comments in Chapter XXXII of the Report.

Another was Raymond W. Wryzykowski who spoke of his experience as a member of the Board of Directors and as President of the Society over a period of eight years, which I believe ended in 1972.

In addition to his service to the Society, Mr. Wryzykowski was active in his church and in the community generally, particularly in family related matters. He is a lawyer. He spoke of Mr. Lovatt and Mrs. Harvey as being dedicated and hard working persons. Especially during his last two years on the Board of Directors of the Society when he was President and Mr. Lovatt was the Local Director, Mr. Wryzykowski had close and satisfactory dealings with Mr. Lovatt and Mrs. Harvey. He had no complaint about Mr. Lovatt's management of the Society. He thought the members of the Board of Directors of the Society were dedicated and formed an excellent board.

Mr. Wryzykowski too had a number of comments in the nature of recommendations which I deal with in Chapter XXXII of the Report.

The third was Inez Williams who spoke of the valuable contributions of Mr. and Mrs. Lovatt to the community and her concern for their well-being in the light of the Inquiry and the publicity surrounding Kim's care.

None of Mr. Sharen, Mr. Wryzykowski and Mrs. Williams had any direct knowledge of or involvement in Kim's case.

No one who was a close neighbour, friend or relative of the Popen family came forward entirely voluntarily. Such persons, had they come forward and testified, might have been of considerable assistance to me. On the testimony upon the Inquiry, I find it inconceivable that no one, apart from those few who testified upon the Inquiry, most of whom were strangers involved with Kim's case as part of their professional duties, or as a result of their employment, saw or heard anything which aroused any suspicion that Kim was being abused.

It would seem that the failure of persons to come forward to testify upon the Inquiry, or even to speak to the counsel and investigative staff of the Inquiry to ascertain if what they had seen or heard would be of importance to the Inquiry, is part of a phenomenom noticed in communities other than the City of Sarnia and the County of Lambton.

In its report which I have reviewed in Chapter XXVIII of this Report, the Farina Committee wrote in part:

> "A more serious concern is that the community seems to condone a certain level of child abuse, and citizens fail to report suspected incidents, perhaps because of conflicted feelings about privacy and parental rights. Whatever the reasons, we note that this child was seriously abused on many occasions and people in the community must have been aware, yet it went unreported."

Mr. Petersen, a member of the Farina Committee, was asked to comment upon the first sentence of that statement. He said:

> "A. It's a global statement. However, there was evidence in the way of that some neighbour apparently had heard Kim crying for a considerable length of time and not reported it.
>
> Q. Yes?
>
> A. So it has some connotation to the Kim Popen case as well but it is more global in our presentation of it, that statement, that it seems to be a community attitude that goes beyond the Sarnia area."

The testimony upon the Inquiry was less dramatic than Mr. Petersen's words would suggest, but, with only that reservation, his comment upon the application of the statement in the Farina Committee's report to Kim's case is accurate.

When asked to explain the meaning of the expression "condone a certain level of child abuse" in the Farina Committee's report, Mr. Petersen said:

> "A. I think we are reflecting on some community values, that some parents think they have the inherent right because of their parentship to punish a child physically, and that is by many people considered a right, and, therefore, they're prepared to condone it when they see it, that a father has a right to punish his son and if a community member is witness to that many times will be prepared to condone it based on the value system of he is a father, he has a right to correct his son and punish him, and that is sort of the kind of gray area where things begin to be touchy and difficult when the punishment is carried beyond a reasonable level and what is "reasonable level"? We don't always know and often we have to present our evidence to the court in order that the court can be the judge as to what community values are, what standards are, what can't be condoned as reasonable correction, physical punishment of a child."

Mr. Petersen expressed his personal opinion that "community standards" relating to child abuse had been changing over a considerable number of years. I understand him to be speaking of the community in a global sense. He felt that, by reason of publication of various items by the media, the whole community, including specifically parents and social workers, had become more aware of the rights of individuals, including children and parents. The result, as he saw it, was that social agencies, such as children's aid societies, were more apt to hear of incidents of alleged abuse of children. Thus, even in the two years following Kim's death there was "considerabl[y] more awareness" of child abuse, even among social workers.

Dr. Bates in his testimony expressed a somewhat similar view. He noted that many more cases of child abuse or suspected child abuse were reported in Ontario in 1977 than had been reported in 1976. That reference was to the Central Registry of such reports established by the Ministry of Community and Social Services. He had some reservations as to the accuracy of records such as those maintained by that Central Registry. Those reservations arose because of uncertainty as to the degree to which children's aid societies across Ontario made such reports.

He attributed that increase in the number of reports to publicity given by the media to cases, such as Kim's, involving death as a result of child abuse. He deplored the scarcity of publicity given to apparently less tragic cases.

Dr. Bates stated that authoritative and reliable sources estimate that, in areas of the United States of America comparable to Ontario, there are in each year between three hundred and three hundred and fifty cases of physical abuse of children for each million persons of population. On the basis of Ontario having a population of eight million, those estimates would indicate that in each year there were between twenty four hundred and twenty eight hundred cases of physical abuse of children.

He noted that those estimates related only to physical abuse. They did not apply to other types of abuse or neglect, such as emotional or sexual abuse or nutritional neglect. Dr. Bates said that if all types of abuse were considered the estimate of frequency might rise to an incidence of close to nine hundred cases of abuse of children for each million persons of population. That would be perhaps eight or nine thousand cases in Ontario each year.

Dr. Bates understood that in 1977, even with the great increase from 1976 which he had noted, only one thousand and forty five cases were reported to the Central Registry. Assuming the accuracy of the estimates of frequency of abuse mentioned by Dr. Bates, that figure represents less than half of the number of cases of physical abuse and about one-eighth of the number of cases of abuse or neglect of all sorts that occurred in Ontario in that year.

The statement in the Farina Committee's report as explained by Mr. Petersen in his testimony is supported by Dr. Bates' testimony.

Dr. Bates in his testimony spoke of varying standards of care of children, including especially their discipline, throughout the world. He said that what Canadians regard as imposition of discipline of children so harsh as to be abuse is not, in some parts of the world, viewed as abuse. He said that in those parts of the world it is regarded as a normal and usual form of discipline of children. He said that Canada recognized that abuse of children was a problem in our society, but some countries have not yet made that recognition.

He expanded upon that testimony to mention the ways in which some abandoned or unwanted children in some countries are treated by elements of government.

In one country he mentioned, he said he had been told that the government attempted to deal with the problem of delinquency of children who roam some cities in bands. Government employees merely pick them up, transport them to the woods and leave them to their own devices to live or to die.

The thrust of this area of Dr. Bates' testimony was that, because the population of Canada is composed of people who, or whose parents or ancestors, were raised in countries with a multitude of standards as to what constitutes abuse of children, special personnel and training would be required to familiarize some of the population of Canada with the standards of care of children currently acceptable in Canada. That would be in addition to an ongoing and organized programme to keep the entire community, including members of the various professions whose careers in any way relate to child care or child welfare, aware of the existence and extent of the problem of abuse of children in the community. The programme would seek the assistance of the entire community in dealing with the problem either in general or in specific instances.

I have made these general observations so as to place in an appropriate perspective the comments I will make in this Chapter upon the involvement of the community in Kim's life. In light of what I have written heretofore in this Chapter, as well as elsewhere in the Report, dealing with certain individuals and segments of the community, it is not surprising that few individuals were involved in Kim's life other than in the course of their professional careers or their employment.

On the basis of the testimony upon the Inquiry and the exhibits filed, it would seem that Annals Popen had a number of relatives in the City of Sarnia and the County of Lambton. He apparently maintained good relationships with any of them who were mentioned, even if not by name, upon the Inquiry. On the other hand it was indicated that Jennifer Popen did not feel that she was well received by those relatives even though one of them, Francis Kameka, who testified upon the Inquiry, often visited her home and "baby-sat" Kim for her on occasion, including the night before her death.

Francis Kameka was the only relative who testified upon the trial. He is a nephew of Annals Popen. He resides with his parents in Sarnia.

He acknowledged that he did not "get along very well" with Jennifer Popen. He said that was because he had found her to be a liar and he did not believe what she told him.

During the summer of 1976 he spent a fair amount of time at the Popen home. After Kim was returned to her parent's home by the Society in May, 1976 he saw Jennifer Popen strike Kim's hands and arms on occasion. The blows he saw were in the nature of slaps with the flat of Jennifer Popen's hand for minor acts of disobedience. Kim cried. The last such occasion was during the last week of Kim's life.

In July or August, 1976 he saw bruises on Kim's jaw and arm. Jennifer Popen did not offer any explanation for the presence of those bruises.

He had not seen Annals Popen slap Kim.

Shortly before Kim's death he saw a sore on her lip. Jennifer Popen told him it was caused by

Kim's biting into some hot waffles while Jennifer Popen answered the door.

On August 11, 1976, the day of her death, he saw Kim in her home at about 11 o'clock in the morning. He did not notice anything unusual about her behaviour or actions. He returned to Kim's home at about 4:30 in that afternoon. She was not walking much or playing. She would not come to him when he called to her. Otherwise she appeared to be normal. She did not seem to be sick or "not herself."

He had seen Kim on the three or four days preceding her death. On those days too she acted normally and seemed to be in good health and he saw no marks upon her other than a sore on her lip.

His parents had told him of Kim's visits to hospital, but he had no knowledge of how she had been injured.

He said he felt it was strange that this little girl, Kim, was injured so often. The following exchange of questions and answers occurred during one period of his cross-examination:

> "Q. Have you any knowledge of how those injuries occurred?
>
> A. No.
>
> Q. Did you think it strange that this little girl had been hurt so much?
>
> A. Yes.
>
> Q. Did you think that all of these injuries were just accidents?
>
> A. No.
>
> Q. What did you think they were Mr. Kameka?
>
> A. I don't know.
>
> Q. If they weren't accidents, how did you think these things had happened?

A. Well, she hit her.

Q. Who hit her?

A. Jennifer."

He had seen Kim in her crib while he "baby-sat" her. She slept and he did not have to attend to her in any way. In his opinion she could not get out of the crib by herself. That expression of opinion accords with Dr. Singh's testimony.

Despite his observations of Kim, her cut lip and the occasions of Jennifer Popen slapping her, and despite his stated unwillingness to believe what Jennifer Popen told him, which would include the explanation for Kim's sore lip, and despite his belief that Kim's injuries were not all caused by accidents, Francis Kameka made no report to anyone that Kim had been physically mistreated.

He was not asked if he was aware of the provisions of section 41 of The Child Welfare Act. I presume he was not. I presume that he accepted that whatever slaps he saw were appropriate disciplinary measures. That presumption is founded on the testimony of Dr. Bates and Mr. Petersen which I have mentioned in this Chapter.

I am not prepared to hold that Francis Kameka's knowledge of Kim's care was sufficient to require him to make any report pursuant to the provisions of section 41 of The Child Welfare Act.

Another relative who was mentioned was Mrs. Fay Popen. She was Kim's aunt, the wife of Annals Popen's brother. Because of her health she was unable to testify upon the Inquiry. Her important involvement in Kim's life occurred in June, 1975.

It was Fay Popen who brought Kim to Dr. Jumean on June 6, 1975 and told him of her fear that Kim was being abused by Jennifer Popen. It was that visit which led to Dr. Jumean's telephone call to the Sarnia Police Force on June 16, 1975 and the subsequent involvement of the Society.

Again I presume that Fay Popen was not aware of the provisions of section 41 of The Child

Welfare Act. However, she, unlike Francis Kameka, was not prepared to accept what she saw. She acted responsibly and brought her concern to Dr. Jumean, the Popens' family doctor. I presume that, like his colleagues in the medical profession, she relied on him to take whatever steps would be required.

Fay Popen had knowledge of physical mistreatment of Kim which, in her opinion, required her to do something to protect Kim. That would be sufficient to require her to make a report pursuant to section 41 of The Child Welfare Act. Her failure to do so arose, at least in part, from her lack of knowledge of the provisions of the statute. There was nothing to indicate what she might have done had she been aware of the statutory provision.

Despite her lack of knowledge, it was Fay Popen who first actively sought assistance for Kim. Some doctors and nurses had been concerned about the possibility that Kim had been abused and might be abused again. Entries to that effect had been made in medical reports and hospital records. Dr. Singh had directed Mr. Khattab to investigate. All of that remained in medical and hospital files. No one made a report pursuant to section 41 of The Child Welfare Act.

Fay Popen's visit and her expression of concern stirred Dr. Jumean to action. That action was long overdue. He waited ten days after Fay Popen's visit before he called the Sarnia Police Force. That was not compliance with the statute, but it did lead to the introduction of Kim's case to the Society.

Jennifer Popen testified that Fay Popen acted out of selfish reasons for wanting to have custody of Kim. There was no evidence to support that allegation. This is another area in which Jennifer Popen's testimony is not worthy of belief. I reject it as being simply another of her self-serving lies.

While Fay Popen did not comply with section 41 of The Child Welfare Act there is no strong suggestion that had she reported directly to the Society or the Crown Attorney the workers of the Society would have acted differently than they did on

June 17, 1975 and thereafter. In saying that, I am aware of the suggestion, in the testimony of the Society's personnel, that their belief that the call to the Sarnia Police Force was anonymous might have affected their actions. I accord no validity to that suggestion.

On June 17, 1975 Fay Popen showed marks of Kim's injuries to Mrs. Saul and Mrs. Hoad, in Police Constable Gander's presence, and told them that Kim had been injured by Jennifer Popen. She expressed her concern about the care that Kim was receiving. Even if the telephone call to the Sarnia Police Force was anonymous, the Society then had a statement directly from Fay Popen that Jennifer Popen had injured Kim. Mrs. Saul was concerned enough by what she saw and heard to make an urgent report to Mrs. Harvey who agreed with Mrs. Saul's initial assessment.

Fay Popen's failure to comply with section 41 of The Child Welfare Act had no bearing upon the eventual unfortunate result.

The only members of the public who, on the testimony upon the Inquiry, had any involvement in Kim's life, other than in a professional or career sense, were Mr. Douglas Gregory Vandenberghe and his wife, Mrs. Judith Ann Vandenberghe. Mr. and Mrs. Vandenberghe had been neighbours of Annals Popen and Jennifer Popen prior to Kim's birth and for another period during the latter part of Kim's life after August 31, 1975. They maintained a close friendship with Annals Popen and Jennifer Popen during all of Kim's life. They had children of their own.

Both Mr. and Mrs. Vandenberghe testified upon the Inquiry. Neither of them had observed any untoward incident involving Kim prior to her being placed in the care of the Society on August 31, 1975. Neither of them had observed any injury to Kim, nor had they any knowledge of any injury to her prior to that time. They had not seen Kim often until then.

After August 31, 1975, Mr. and Mrs. Vandenberghe demonstrated their real friendship for Annals Popen and Jennifer Popen. They attempted to help them. At their request, Mr. Vandenberghe drove Annals Popen and Jennifer Popen to the courthouse on several occasions and remained available in the building, willing to give character evidence if required, during the proceedings in the Provincial Court (Family Division) of the County of Lambton. He was not called as a witness during those proceedings.

After Annals Popen was sentenced upon the charge under section 40 of The Child Welfare Act, he asked Mr. Vandenberghe to take him to Alcoholics Anonymous. Mr. Vandenberghe took him to a number of meetings of Alcoholics Anonymous.

In addition to that, Mr. Vandenberghe helped Annals Popen and Jennifer Popen in connection with the Parent Effectiveness Training Course. He said that Annals Popen attended that Course because he was directed to do so, but nonetheless he seemed to have a better understanding of it than Jennifer Popen had. He said Jennifer Popen appeared to be confused by it. She questioned its purpose and did not enjoy going to it.

Upon the Inquiry, Mr. Vandenberghe was asked about conversations he had had with Jennifer Popen after August 31, 1975 with reference to Kim's injuries.

He testified that Jennifer Popen told him that the broken arm suffered by Kim in March, 1975 was caused by Kim catching her arm in her crib. He believed Jennifer Popen and accepted her statement that the injury was caused by accident.

He said that Jennifer Popen gave him contradictory explanations for Kim's broken arm which was found upon her visit to the hospital on August 31, 1975.

The first explanation was given to him "right after" the Society took Kim into its care. That explanation was that Annals Popen, having come home intoxicated and fallen asleep on the couch, awoke during the night and asked Jennifer Popen to prepare food for him; Jennifer Popen refused; Kim was crying; Jennifer Popen picked Kim up and Annals Popen threw a slipper at Kim and caused the injury to Kim.

The second explanation was given to him about a week later. It was similar to the first, but in it, rather than throwing a slipper, Annals Popen had hit Jennifer Popen and his hand had hit Kim and caused her injury.

A third explanation was given to him after Kim's death and Jennifer Popen's arrest upon the charge of manslaughter. He had visited her in jail on the day of her arrest. She told him then that she had injured Kim. He advised her to inform the Sarnia Police Force of this and she did, in his presence. He had told her that that would enable her to get the help she might need. She said that Annals Popen had not injured Kim. She said that she lost her temper and injured Kim and could not later remember what she had done. She said she hit Kim all over her body, about the groin area, back, kidneys and head,

> "just a flay of fists about the body of the baby and she could have damaged the lower area."

That latter was in response to a question as to how the injuries to Kim's rectal and vaginal areas had been caused.

In the statement which Jennifer Popen had given to the police officers on that occasion, she denied knowledge as to how those injuries were caused, other than that those in the vaginal area might have occurred if Kim turned while Jennifer Popen hit her. Apart from that possible distinction that statement corresponded with what she had earlier told Mr. Vandenberghe.

In that explanation Jennifer Popen maintained that Kim had died as a result of falling from the porch to the ground on August 11, 1976.

Mr. Vandenberghe had also spoken with Annals Popen about Kim's injuries on and prior to August 31, 1975. Annals Popen had told Mr. Vandenberghe that he had no memory of how Kim was injured in March, 1975 because he had been "drinking most of the night" and when he awoke in the morning Jennifer Popen told him what had occurred. He accepted that what Jennifer Popen told him was true and that he had injured Kim.

On the basis of that and his own lack of belief that Annals Popen could have injured Kim so severely, Mr. Vandenberghe had urged Annals Popen to reject Mr. Higgins' advice that he plead guilty to the charge under section 40 of The Child Welfare Act. But Annals Popen told Mr. Vandenberghe he would plead guilty as the means of having Kim returned to her home.

Mr. Vandenberghe testified that he saw no mark of any injury to Kim until after she was returned to her home by the Society in May, 1976. He had seen a cut on her lip, a bruise on her lower chin and a sore on the end of a finger. He said the marks of injury had been there "gradually in the three month period" after her return. He particularly noticed them when Mrs. Vandenberghe drew them to his attention about two weeks before Kim died. He had not seen Kim very often even during that three month period when both his family and hers were living in the same building, but in separate apartments.

He described the injury to the lip as "[looking] like a coldsore" and being very easily seen. He said that the marks of injury he had seen were similar to the corresponding marks seen on Kim's body after her death as shown in photographs filed as exhibits upon the Inquiry.

He said Mrs. Vandenberghe had been "wondering" about the various injuries suffered by Kim. He said Mrs. Vandenberghe felt that Jennifer Popen told "too many stories to every injury". He tried to allay his wife's concerns and suggested that the injuries were such as children suffer in normal activities. But even so, in describing his own thoughts at the time, he said,

> "I didn't know what to really believe or say".

In another answer he spoke of Mrs. Vandenberghe having brought Kim's injuries to his attention a couple of weeks before Kim died and concluded the answer by saying:

> "...I didn't want to believe anything was going on."

The latter answer is virtually an admission of wilful blindness.

Mr. Vandenberghe said Jennifer Popen was critical of Mrs. Lo, particularly because of questions she put. Jennifer Popen resented Mrs. Lo's visits. Jennifer Popen and especially Annals Popen were fearful that if Kim were injured again, even accidentally, she would be removed permanently. He understood that that fear stemmed from some comment made by someone when Kim was returned in May, 1976.

Mr. Vandenberghe said no one from the Society had inquired of him as to Kim's care or well-being while she was alive. Mrs. Harvey spoke to him after Kim's death. She merely expressed disappointment and a lack of understanding of what had happened. She asked him to try to help Annals Popen and Jennifer Popen.

On the basis of Jennifer Popen's having told him that she injured Kim only when Annals Popen was absent, Mr. Vandenberghe believed that Annals Popen was unaware of what was happening. That belief was also based on his observation that Annals Popen entirely trusted Jennifer Popen and entrusted Kim's care to her.

Mr. Vandenberghe was vehement in stating his belief that Annals Popen had not harmed Kim, a child whom he loved and treated tenderly.

I am satisfied that Mr. Vandenberghe was aware that Kim had suffered the injuries which he described. They were upon parts of her body not covered by clothing. Because of his wife's concern expressed to him he had some suspicion during the last two weeks of Kim's life that some or all of her injuries had not been caused by accident.

Bearing in mind his knowledge that Kim had been seriously injured in August, 1975, and had been in the care of the Society for several months as a result thereof, and his knowledge that Annals Popen had pleaded guilty to a charge in the Provincial Court (Family Division) of the County of Lambton as a result of that injury, Mr. Vandenberghe would have been justified had he made a report pursuant to section 41 of The Child Welfare Act.

falling to sleep. Mrs. Vandenberghe was in Kim's bedroom only momentarily. She saw no mark of injury upon Kim at that time.

On another occasion Mrs. Vandenberghe saw "a bruise around [Kim's] whole neck." Mrs. Vandenberghe did not know how that bruise was caused, but Jennifer Popen told her it was caused by a dress which was "too tight."

On another occasion, again during the last three or four weeks of her life, Kim was sitting in her chair when she became ill and vomited. Jennifer Popen slapped Kim from her waist to her shoulder, administering perhaps six slaps which Mrs. Vandenberghe described as not being "gentle," but as being "hard enough." Mrs. Vandenberghe did not regard Jennifer Popen's actions towards Kim on that occasion as being appropriate. She expressed her disapproval to Jennifer Popen.

Mrs. Vandenberghe spoke of the cut in Kim's bottom lip. This was the mark Mr. Vandenberghe had mentioned. She said it looked like a coldsore, but did not heal properly. She had seen Kim picking at it. It was as visible as shown by a photograph of Kim taken after her death.

Mrs. Vanderbenghe had also seen the injury to Kim's finger which Mr. Vandenberghe had mentioned in his testimony. She said it appeared to have been a blister which had broken.

Mrs. Vandenberghe had seen a similar injury, like a cut which had not healed on one of Kim's toes.

She had seen a bruise on Kim's cheek.

Mrs. Vandenberghe said she had asked Jennifer Popen about each of these injuries to learn the cause of each. The following questions and answers then ensued during her testimony:

"Q. What did she say?

A. There's a few stories for each one.

Q. She wouldn't even tell the same story about each injury consistently?

A. To me she told one and then she'd tell one of my friends a different one and she'd tell me and I'd go back and tell Jennifer and she'd say: 'Yeah, I told you the wrong one; that was the right one,' and you didn't know which one to believe really.

A. So, you didn't believe it?

Q. No, not really."

Mrs. Vandenberghe was asked about Mrs. Lo's relationship with Jennifer Popen and with Mrs. Vandenberghe. I am satisfied that apart from one incident prior to Kim's return home in May, 1976, there was a pleasant enough, but quite limited contact between Mrs. Vandenberghe and Mrs. Lo. If Mrs. Vandenberghe were in the Popens' apartment when Mrs. Lo arrived, either to escort Kim on a visit to her home or to make a visit on her own after Kim's return, Mrs. Lo occasionally inquired of Mrs. Vandenberghe as to the conditions in Kim's home. Any such inquiry was general in nature and was not addressed to the matter of Kim being mistreated. Mrs. Vandenberghe responded. Her responses, with one exception, contained no mention of any problems. Mrs. Vandenberghe was not asked such a question at any time after she observed the two incidents of Jennifer Popen's slapping Kim. It was not clear from Mrs. Vandenberghe's testimony, but it would seem that no question as to her observations was put to her by Mrs. Lo after Kim was returned home in May, 1976.

Mrs. Vandenberghe said she was always available had Mrs. Lo sought her out to make any inquiry. She said she would have replied to any question. Mrs. Lo had not sought her out at any time, but merely spoke to her if she was in the Popens' apartment when Mrs. Lo arrived. She had always answered Mrs. Lo's questions.

Mrs. Vandenberghe impressed me as being a caring mother to her own children, with a concern for children in general. She seemed to me to be a forthright person who, because of the location of her home, had become involved in Kim's life. Perhaps it was in retrospect, but she seemed to feel some sense of guilt because of Kim's tragedy. While prepared to assume some such sense of guilt, she guite properly and correctly felt that others should feel at least equally guilty and probably should feel a greater sense of guilt.

It perhaps was Mrs. Vandenberghe's forthright nature that led to the one exception to the essentially pleasant relationship between her and Mrs. Lo. It occurred during one of Kim's visits to her home before May 27, 1976.

Mrs. Vandenberghe was aware of the fear that both Annals Popen and Jennifer Popen had that if Kim were to come to any harm, no matter how caused, the Society would again remove her and perhaps seek permanent custody. She spoke to Mrs. Lo about that fear, pointing out that it was leading to severe restrictions upon Kim's play and normal childhood activities. She had told Mrs. Lo that children suffered bruises in normal play and that on one occasion Kim had had a bruise when she arrived home for a visit. I gathered there was really no resolution of the discussion even though Mrs. Lo agreed that children do get hurt at play.

In her turn, as it were, while Mrs. Vandenberghe stood ready to answer any of Mrs. Lo's queries, she did not approach Mrs. Lo or anyone at the Society at any time in any way even after the incidents of slapping which she had witnessed. She had told Mrs. Lo of her willingness to help Jennifer Popen if help were needed.

That lack of approach would seem to be an example or variation of the phenomenon which was mentioned in the report of the Farina Committee and commented upon by Mr. Petersen during the Inquiry. I have set forth in this Chapter an extract from the report of the Farina Committee and a review of some of Mr. Petersen's testimony.

In Mrs. Vandenberghe's instance her decision to withhold any approach to Mrs. Lo, and thus any report upon the incidents she had witnessed, was not based upon any condonation of Jennifer Popen's actions. On each of the two "slapping" incidents

Mrs. Vandenberghe disapproved of Jennifer Popen's conduct and told her so.

Despite Mrs. Vandenberghe's disapproval of Jennifer Popen's treatment of Kim on at least the two occasions, the following exchange of questions and responses occurred during her testimony upon the Inquiry:

> "Q. But you knew that Mrs. Lo, in any event, you knew that Mrs. Lo was enquiring?
>
> A. No. She didn't ask, and to me, I don't butt in.
>
> Q. Well, she asked how Kim was doing, didn't she?
>
> A. When she was bringing her home for visits.
>
> Q. All right.
>
> A. I did not talk to her when Kimmy come home to stay.
>
> Q. Well, Mrs. Lo was opening up the area that you could talk about how Kimmy was getting along when she came home on visits?
>
> A. She asked me once.
>
> Q. All right. What I want to know is, Mrs. Vandenberghe, if you were concerned about the two incidents?
>
> A. Yes, I was. I already told you I didn't think it was right.
>
> Q. All right. Why didn't you inform Mrs. Lo...?
>
> A. But, how may I to say "You can't hit your child for doing that"?
>
> Q. Well, it might help...

A. Why? I - I hit my children. Does that to say somebody's going to call on me?

Q. As a parent, you were concerned about Mrs. Popen on at least these two occasions hitting her daughter?

A. Yes.

Q. Looking back on it now, don't you think it might have been helpful to Mrs. Shirley Lo if you'd told Mrs. Lo that these two incidents had happened?

A. Yes. I feel guilty enough. All right?

Q. All right.

A. I'm not the only one.

Q. Mrs. Vandenberghe, we're not trying to blame you. I'm just asking if it would have helped. And you can agree with me, can't you Mrs. Vandenberghe...?

A. No, I can't.

Q. That Mrs. Lo was around between the end of May 1976 and the death of Kimmy? She was around the house?

A. All right. Could she not knock on my door and say 'Can I speak to you?'

Q. She could have come up to see you?

A. Yes, she could have.

Q. Or you could have gone to find her?

A. Well, maybe I could have. I didn't think nothing of it then."

It would seem that Mrs. Vandenberghe was prepared to tell Mrs. Lo, or anyone, of the incidents if she were asked, but she was not prepared to volunteer the information. She was not going to "butt in." In addition she was expressing a part of the phenomenon mentioned in the report of the Farina Committee. She did not feel that a parent's slap administered to a child, even inappropriately, without more, merited a report to any authority or social agency.

Mrs. Vandenberghe's position is similar to that of her husband in that she would have been justified in reporting her concerns to Mrs. Lo or otherwise pursuant to section 41 of The Child Welfare Act. Even if the Society chose not to act upon her report, she would have been entitled to the protection of section 41(2) of that statute.

In my view, she, unlike her husband, was required by the application of section 41 of The Child Welfare Act to report her concerns. She was not asked, but I presume that, like so many others who testified upon the Inquiry, she was not aware of the provisions of that section.

Though not as aware as Mr. Vandenberghe, she was aware of some of the past events in Kim's life and the resulting involvement of the Society. She had seen all of the marks of injury to Kim that Mr. Vandenberghe had seen. She had also seen the bruise on Kim's neck and the injury to her toe. Most importantly she had witnessed two incidents of corporal punishment of Kim by Jennifer Popen. She had felt each was inappropriate. She had protested Jennifer Popen's action in leaving Kim in a wet bed. She was aware that Jennifer Popen told "stories," lies, as to the cause of injuries to Kim. She was concerned about and suspicious of the circumstances to such an extent that she spoke to Mr. Vandenberghe about her suspicions that all of Kim's injuries were not the result of accidents.

Taken together all of that was sufficient information of physical ill treatment of Kim and her need for protection to require Mrs. Vandenberghe to make a report pursuant to section 41 of The Child Welfare Act.

As I have written in relation to her husband, it is my view that Mrs. Vandenberghe's failure to report her suspicisions as required did not contribute to the ultimate tragedy. All of what I wrote to explain that opinion in respect of

Mr. Vandenberghe applies equally in respect of Mrs. Vandenberghe. I am not disposed to think that the opinions and decisions of Mrs. Harvey and Mrs. Lo would have been changed as a result of anything Mrs. Vandenberghe might have told them.

I am mindful of Mrs. Vandenberghe's testimony, which I accept, that she had told Mrs. Lo that if Jennifer Popen needed help she needed only to call on Mrs. Vandenberghe who would do her best to help. That was a clear offer to assist in anyway she could. I am also mindful of Mrs. Vandenberghe's testimony, which I accept, that while Mrs. Lo had casually in Jennifer Popen's presence asked questions about Kim's care earlier in 1976 she had not at anytime actively sought out Mrs. Vandenberghe for information and, for some time prior to Kim's death, had not even asked questions as she had done earlier.

I am aware that Mrs. Vandenberghe is not in any way trained to deal with or to detect instances of abuse of children. While persons who are so trained would have been expected to recognize that some of what Mrs. Vandenberghe observed were indicia of the possibility that Kim was being abused, it is only fair to Mrs. Vandenberghe to say that she did not recognize the full implication of what she observed. She should not be expected to have made that recognition.

It must also be noted that the events which raised Mrs. Vanderbenghe's suspicion occurred in a relatively short period of time. That was at most from May 27 to August 11, 1976, but Mrs. Vandenberghe's suspicion was not really aroused until the last three or four weeks of Kim's life. Even then neither incident of slapping made any mark of injury to Kim. Mrs. Vandenberghe did not know how Kim's injuries were caused. Apart from the two incidents of slapping, Mrs. Vandenberghe had not observed any physical mistreatment of Kim.

If time had not run out on Kim, Mrs. Vandenberghe might have been able to analyze and assess what she observed. She might then have sought out Mrs. Lo or someone at the Society.

While all of that may not be a justification for Mrs. Vandenberghe's not having made any report as required, it certainly is, to me, a strong factor in mitigation of any criticism of Mrs. Vandenberghe.

Another neighbour who testified was Deborah Evelyn Ginn who, at the age of 15 in July, 1976, was engaged to "baby-sit" Kim during the day time while Jennifer Popen was in hospital for the birth of her next baby.

Miss Ginn knew Mrs. Vandenberghe, but had been in the Popen home on only one or two occasions before she began her duties. She had not seen any marks of injury on Kim on those occasions. On one such occasion Jennifer Popen had slapped Kim on the upper part of her leg as a form of discipline to enforce Jennifer Popen's direction to Kim to stay on the couch. Kim appeared to be afraid of Jennifer Popen.

Miss Ginn saw, and, with her mother, treated an injury to one of Kim's toes while Jennifer Popen was in hospital. Jennifer Popen had told her that Kim injured the toe on her crib. Miss Ginn said the mark of the injury was round. The injury appeared to have been a burn and to have become infected. It was more or less raw and open. Miss Ginn and her mother treated it as such.

Miss Ginn noticed a sore on one of Kim's fingers. It too appeared to be a burn. Jennifer Popen told Miss Ginn that Kim burned it by putting it in a base plug, an electrical outlet.

Miss Ginn also saw a small bruise on Kim's cheek. It appeared to be healing. Miss Ginn saw all of this when Kim awoke on the first morning of Miss Ginn's duty. She mentioned these injuries to Annals Popen who seemed to be aware of them. He later provided ointment to be applied.

These were three injuries that a young girl saw. One was serious enough to cause her to ask her mother for help. Had Mrs. Lo been as observant as that young girl she could easily have seen those injuries.

The injury to the toe might have been concealed by a sock, but if Mrs. Lo had examined Kim, removing clothing in the process, she would have seen it.

Miss Ginn was responsible for getting Kim up in the morning and ready for bed at night and for her care between times, including changes of clothing. She did not notice any enlargement of Kim rectum or vagina. She could not remember having noticed any rash in those areas of Kim's body.

Miss Ginn testified that she did not regard the marks she saw on Kim as being unusual for a child such as Kim. She was not alarmed by them. She accepted Jennifer Popen's explanations.

Miss Ginn said that Kim and Annals Popen seemed to have a good and happy relationship. Annals Popen disciplined her by talking to her to explain the reason for discipline. He was patient with her. He did not slap her. He seemed to be a loving and indulgent father. That assessment of Annals Popen is similar to Mr. Vandenberghe's assessment of him.

Miss Ginn was under no duty to make any report under section 41 of The Child Welfare Act.

Chapter XXVI

The Role of the Ministry of Community and Social Services

In Chapter II of the Report I set forth a quotation from Petronius together with some comment thereon. I suggested then that that quotation was appropriate as one considered the role of the Ministry of Community and Social Services in Kim's life. As I prepared this Chapter of the Report the appropriateness of that suggestion became more apparent.

So that readers of the Report might for themselves consider the application of Petronius' statement to the affairs of the Ministry of Community and Social Services, that statement, as quoted during the Inquiry, was:

> "We trained hard, but every time we were beginning to form up into teams we would be re-organized and I was to learn later in life that we tend to meet any new situation by re-organizing and a wonderful method it can be for creating the illusion of progress while producing inefficiency and demoralization."

For brevity I will call the Ministry of Community and Social Services, the "Ministry" and the Minister of Community and Social Services the "Minister." If the context permits, the term the "Ministry" will include the Minister and members of the staff of the Ministry.

If the context permits, I will usually call children's aid societies, individually the "society" or collectively the "societies" as the case may be. As I have done elsewhere in the Report I shall call the Children's Aid Society of the City of Sarnia and the County of Lambton the "Society."

While the Ministry had very little direct involvement in Kim's case during her lifetime, the

Ministry's policies and practices had an important effect upon that case. During her lifetime the Ministry was informed of Kim's case, but did not take advantage of the opportunity thus afforded the Ministry to take an active interest in its management.

It is my intention to divide this Chapter into five parts. Each part will deal with a separate or distinct facet of the complex and pervasive role of the Ministry in Kim's life. Those several parts will bear captions as follows:

(I) General Review of Statutory Powers and Duties - The Child Welfare Act and Regulations thereunder

(II) The Duty of the Director appointed under The Child Welfare Act to Advise and Supervise and Inspect the Societies

(III) Financial Affairs

(IV) Standards of Service

(V) Records, Returns and Reports

A brief review of the history of the development of a system of child welfare in the Province of Ontario may be of assistance. It is based primarily upon the testimony of John Kenneth Macdonald who, when he testified upon the Inquiry, was Area Planning Co-ordinator for the Ministry. From May, 1974 until May, 1978 he had been Director, an office established under the provisions of The Child Welfare Act, hereinafter usually called simply the "Act."

The Act and other statutes assign duties to the holder of that office. The holder of that office is sometimes called the Director of Child Welfare or the Director of the Child Welfare Branch of the Ministry. In this Chapter the person so appointed shall usually be called the "Director."

Mr. Macdonald did not hold himself out as an historian of child welfare, but offered what he called "a rough general outline of the history of the child welfare movement in Ontario." I accept it as such and as sufficient for the purposes of this Report.

From what he said and from some of the testimony of other witnesses, such as Mr. Raymond Wryzykowski Past President of the Society, it would seem that there have been certain tensions between the societies and the Ministry as a result of the relatively recent and growing involvement of the Ministry with the societies, particularly in financial matters. That involvement of the Ministry is, or is regarded by some to be, an encroachment upon the autonomy of the societies.

That history of the development of the system of child welfare in Ontario covers a relatively short period of time. The first society was formed about 1874. It had resulted from the concern of a newspaper reporter, John Kelso, for a number of children, probably orphans, in downtown Toronto. That society was privately organized and funded under the auspices of a church. About two years later a second society in Toronto was organized and funded under the auspices of another church. About that time a similar society was organized in Ottawa under private as well as church auspices. These societies were charitable organizations organized pursuant to general statutes or law. There was no legislation specifically authorizing or regulating their organization. They were primarily funded and operated by churches. Neglected or orphaned children were their primary concerns. After that beginning, societies to provide services to children were formed in various communities throughout the Province.

At some time in the 1920's a Superintendent of Child Welfare was appointed by the Province of Ontario. The Superintendent of Child Welfare was responsible for overseeing the societies which had been formed. Mr. Macdonald understood that no funds were provided to the societies by the Province of Ontario until the 1940's when some provincial funds were provided primarily to assist in meeting the costs of children in the care of the societies. He was not aware that any provincial funds were then applied towards the cost of other services furnished by the societies.

Prior to 1965 a number of statutes affected various facets of services to or respecting children, including one statute entitled The Child Welfare Act enacted in 1954.

In 1965 The Child Welfare Act was re-enacted. The re-enactment effected a number of amendments. For the first time in Ontario the Provincial Government became involved in the provision of funds to the societies for expenditures other than for the cost of maintenance of and provision of services to children in their care. The Province of Ontario agreed to assume a substantial portion of the costs of the full range of services provided by the societies. The municipalities in the Province were required to assume a portion of the costs of societies operating within their boundaries. Some of the societies had other sources of funds, such as donations or bequests, which funds could be used to meet particular purposes outside the scope of budgets subject to the control of the Ministry.

The Act was amended from time to time after 1965 to permit the provision of additional services to families and children. Essentially the Act in force during the months of Kim's life was the statute enacted in 1965.

After Kim's death the Act was further amended and, in 1978, it was superseded by The Child Welfare Act, 1978 which came into force in 1978 and 1979.

When Mr. Macdonald testified his remarks were related to the Act as it was at the time of Kim's death and shortly thereafter.

Mr. Macdonald understood the basic intent of the Act was to ensure that children are protected from abuse and exploitation and that they enjoy a basic, decent standard of life.

Mr. Macdonald said that the primary role of the Ministry was to provide funds to the societies. From the testimony upon the Inquiry it would seem that the Ministry shared Mr. Macdonald's view. The organization of the Ministry in relation to the financial affairs of the societies and the activities of the Ministry in that regard indicate the great importance placed by the Ministry upon budgeting and financial accounting procedures and reporting.

The Ministry appears to have had little difficulty in establishing and maintaining that portion of its organization. Other portions of its organization, related to what were regarded by the Ministry as secondary or other roles, were not so well established and maintained. It was in connection with those so-called secondary roles that the situation described by Petronius became most evident.

I accept that financial controls and accounting are important. I do not accept that the provision of funds is the "primary" role of a Ministry having responsibility for the administration of the Act, a statute which, on Mr. Macdonald's testimony, is intended to ensure the protection of children from abuse and exploitation and to ensure that children enjoy a basic, decent standard of life.

For some years there have been about fifty societies in Ontario. All are incorporated as required by the Act. Not all of them include the words "children's aid" in their corporate names.

Mr. Macdonald's opinion was that operation of the child welfare system in Ontario was viewed, by those involved in it, as a co-operative venture undertaken by the Ministry and the societies.

He said the Act "fairly well defined" the duties of the societies, but there were ongoing questions as to the correct interpretation of those statutory duties.

He spoke of the provision of the Act whereby each society, through its board of directors and local director, was given responsibility for the administration of the Act within the geographical area served by it.

PART I

General Review of Statutory Powers and Duties - The Child Welfare Act and Regulations thereunder

I now proceed to a discussion of the powers given to and duties imposed upon the Ministry by the Act. That will include the powers and duties of the Director appointed for the purposes of the Act. The Director is an official within the Ministry. The Ministry is responsible for the administration of the Act.

The Director's duties under the Act are described generally in section 2 of the Act. In brief, insofar as they relate to the Inquiry, those duties are to advise and supervise the societies and to inspect or direct and supervise the inspection of the operation and records of the societies. The Director must perform such other duties as are prescribed by the Act or the Regulations made thereunder or by other legislation.

The Act gives certain powers to the Lieutenant Governor in Council. By section 18 of the Act, if, in the opinion of the Lieutenant Governor in Council, a society is unable to perform its duties the Lieutenant Governor in Council may appoint a board of directors of that society. By section 19 of the Act, the Lieutenant Governor in Council may, upon the recommendation of the Ministry, dissolve a society. I note that section 18 of the Act does not contain reference to any recommendation of the Ministry, but I presume that in practice any exercise of the power given by that section would be based upon information or advice from the Ministry.

Section 12 of the Act requires monies to be paid to each society out of monies appropriated by the Legislature. Other sections of the Act, particularly sections 8, 9 and 11, and the Regulations made under the Act, particularly sections 2 to 4b thereof, prescribe the procedures for the determination of the amount of any such payment. Other sections of the Act and Regulations apply to certain capital grants which are not the concern of the Inquiry.

By the Act each society must each year prepare an estimate of its expenditures for operations "for the year next following." It must file that estimate with the Director and each municipality in the area it serves. The Director is to fix the date by which such filing must be made. I shall call that estimate the "budget."

Assuming that the society's budget is satisfactory to the municipal councils, the Ministry may approve it or follow procedures to vary it. Those procedures require notice to the society and to the municipal councils which are concerned. If the society or any interested municipal council does not agree with any variation of the society's budget proposed by the Ministry, it may request the Ministry to refer the matter to a child welfare review committee. Such a committee reports its findings and recommendations to the Minister whose decision, made following such report, is final. The findings and recommendations of such a committee are made available to the parties concerned.

Sections 11 to 21, inclusive, of the Regulations made under the Act follow the caption "Standards of Service." Those sections set forth the qualifications required of those persons holding positions as local directors, supervisors, social workers and social work assistants within the societies. They require each society to employ "adequate supervisory staff for its social workers."

Those sections of the Regulations require a society to follow certain procedures upon receipt of any complaint respecting children in need of protection. They require the society to prepare and record a plan for each child in its care and to review that plan regularly and to amend it as required. They require the society to arrange regular medical and dental examinations of each child in its care.

I recognize that some of those Regulations impose duties upon the societies. I set them forth in this Chapter solely in relation to the earlier statutory provision requiring the Director to advise and supervise the societies and to inspect their operations and records.

PART II

The Duty of the Director to Advise, Supervise and Inspect the Societies

In considering these duties of the Director and the manner in which they were performed or neglected, the aptness of Petronius' statement becomes apparent.

Upon the testimony of Mr. Macdonald and others, some of whom were or had been employees of the Ministry, I am satisfied that the Director did not adequately fulfill the duty to advise, supervise and inspect the societies. The Ministry is responsible for the Director's failure to fulfill that duty. The Ministry may be the cause of the Director's failure.

When the Act, as re-enacted in 1965, came into force, the Ministry, or its predecessor in responsibility for the administration of the Act, established a Child Welfare Branch within the Ministry. I may hereafter call that branch the "Branch."

I understand the testimony to be that from the outset the Branch maintained close supervision of the financial affairs of the societies and required annual financial audits and monthly financial statements to be submitted by each society. The personnel involved in that aspect of the Branch's operation remained relatively stable.

The Ministry's supervision of the operation of the societies and their records, apart from financial affairs, was less strict and less consistent.

During all of Kim's life there were fifty-one societies in Ontario.

To gain some indication of the scanty supervision of the societies by the Ministry, the Director and the Branch, one must look at the testimony as to the staff and organization of the Ministry charged with responsibility for that function.

Mr. Macdonald was asked how the Ministry had fulfilled its statutory duty to supervise and inspect the societies. The question was addressed to a consideration of the situtation in 1975, but the answer was more far-reaching.

The initial question and answer, as recorded in the transcript of the proceedings of the Inquiry, together with certain comments or supplementary questions, were as follows:

> "Q. The responsibilities assigned to the Ministry by the Act of supervising children's aid societies and inspecting and directing them, I think we had better get into that area now if we may. How did the Ministry supervise and inspect local children's aid societies in 1975 particularly?
>
> A. OK. Can I go back?
>
> Q. Sure.
>
> A. To maybe '74. In the ten years actually since the 1965 Act there has been a rather cyclical approach to supervision.
>
> HIS HONOUR: What kind of an approach?
>
> A. I called it cyclical because it has varied and altered through the period, and I'll explain that, in that up until about 1968 or 1969 the Ministry utilized professional field consultants as the primary source of supervision and contact with the children's aid societies.
>
> In 1969, and I can't speak to the primary reasons a number of the professional staff left the Branch and again not speaking to the reasons, it was determined to try to work with a combination of professional social workers as field consultants and what were called field readers, whose responsibility was to do a statistical survey and analysis of cases among the children's aid societies in each year. That method worked until 1974, I think 1974 was the last of the survey approach to the supervision of children's aid societies, and after that, and I'll get back to this in a

minute, we looked to restoring supervision through professional consultants rather than through the use of the field unit.

In 1974 there were a small group of field consultants and a small group of the readers totalling I think 7 or 8 at that particular time. In 1974 which was the year that the Ministry went into re-organization and the objective was to differentiate between program development and program delivery, and this was a result of the Hanson task force which recommended that and recommended an awful lot of things about how the Ministry must take a more significant role in the development and enforcement of standards. In 1974 or actually in '73 it began. The Ministry launched a very significant project to develop an integrated case management information system. This system was designed and initiated with the objective of insuring that the kind of information at that time provided by the field workers would be available automatically through a standarized, provincial-wide information system required from the societies who would report on the progress of cases, and would report in much more specific details through automatic information systems, the status quo of various cases. It was also designed to assist the manager, the local director, the supervisory staff and the individual field worker in his own functioning with the cases. It was intended that every field worker would get a report on his own cases, every supervisor a report on his field workers cases and this is at the agency's level, every director a report on all of his cases and the Ministry as a by-product would get a report of all the cases across the province. So we were seeking to move to a much more detailed information system which would replace the function of relatively random sampling techniques of gathering sample data through the use of the field workers. They were able to do about 30% of the cases in the province, meaning they couldn't do about 60% or 70%. We had hoped that we would be able to institute a system that would give us the same kind of information in more detail on all cases in the province. The intention to do that was a necessary prerequisite as well for the establishment of some kind of legitimate standards. The children's aid societies and ourselves have long recognized that the availability of quantitative or evaluative kind of standards has been weak, the system has been going for a hundred years and still not fully accepted approach to standards had been developed and we wanted to put some emphasis on that, but we needed this kind of quantifiable data to develop the necessary standards. So we sought at that same time to --

Q. Try and give just a little bit of the problem. This was in 1974?

A. '74 and '75, yes.

Q. OK.

A. Through a process which had been initiated, there were a great number of initiatives during that time related to the standards development. The development of the information system continued right through as a matter of fact until 1977-78 when the Children's Services Division was created and it was necessary to develop a provincial-wide information system for all children's services which made it a much more complex job, but work went on during the years 1964 through 1968 and some still continues.

Q. '74?

A. '74, sorry, '74 through a variety of committees which were joint Ministry-children's aid society committees, there was what is called the Management Information System steering the Council which consisted of both Ministry and agency representatives who co-ordinated the development of this very complex information system, and that although it took a great deal of time is beginning to or will begin to provide I think very useful information when it becomes a part of a general system. The point is though that our intention at that time in '74 and into '75 was to replace the function performed by the field workers with a provincial-wide information system and to strengthen the advisory, supervisory monitoring role through the employment of professional consultants, professional social workers.

Q. By the Ministry?

A. By the Ministry, yes.

Q. I wonder, Your Honour, if this would be a convenient time to break?

HIS HONOUR: I think it would be, Mr. McRae, we'll take fifteen minutes, please.

--Short Recess.

--On resuming:

HIS HONOUR: Mr. McRae, please.

MR. McRAE: Thank you, Your Honour.

Q. I think we were dealing with the major re-organization plans which commenced in 1974 as a result of the recommendation in the Hanson report. Was that major re-organization, in fact, implemented?

A. No.

Q. Would you like to --

A. And if I can pursue the chronology --

Q. Alright, sure, I don't want to break up the chronology.

A. That reorganization was major not only in a sense of a structural reorganization but it was also major in a sense that many, many professional roles in the Ministry would have to change: people who had been doing both service delivery and program development would have had to specialize in one or the other. There was a problem of decentralization geographically in terms that people would have had to move perhaps geographically so it wasn't an easy reorganization to implement. It was also a costly reorganization, in that in order for it to be successful and achieve the objectives it would have had to - or would have required I think significant additional manpower on the part of the Ministry to make it work.

In April, I believe, of 1975 we saw the beginning of fiscal restraint in a real sense. At that time Cabinet imposed a hiring freeze and this was the first round of a continuing series of restraint programs that continue until today; that hiring freeze, I think it was, that manpower constraint program begun at that time made it very, very difficult for the Ministry to pursue its reorganization plans because there just wasn't the flexibility to move people, to create new roles, to hire additional staff and so on.

In July, I believe, of 1975, and I should go back one step. At the same time as the Ministry was going through this reorganization, the services for the mentally retarded which was a large component of the Ministry of Health involving some 8,000 staff were attached to the Ministry of Community and Social Services so all of a sudden we had moved from a staffing level of about 3500 to a staffing level of some 12,500 or 11,500 and that put additional burdens on the Ministry's management system.

HIS HONOUR: What do you mean by that, your staff increased?

A. The total Ministry staff responsibility in 1974, I believe, increased from 3500 to some 13,000; this was added to the Ministry without a change in the basic design of the superstructure of the Ministry of the senior management personnel. So it was culmination of the dynamics of the growth of the Ministry overnight and the restraint programs which were just beginning led, I believe, and I must say I was not privy to the management meetings that made the decisions, but my understanding is that it led to a conclusion that we would not be able to go the route of separating program development from program delivery and elected to continue on at least during constraint programs with an organization which was halfway.

Q. Right. Now, just so that it's clear and it is a little difficult to follow, in 1973 or early 1974 the field supervisor program was cancelled or allowed to expire?

A. No, I don't think that's the proper way to put it. The Branch, the Child Welfare Branch, a very small component of this enormous Ministry was also working along the lines of decentralizing to the district offices and setting up a program development organization, the situation was in very much a state of flux and by 1975 all of the four field workers who knew, I think, that their role would be altered by the development of an information system and by the decentralization of responsibility had sought and achieved other employment.

Q. So by what, mid-75 there were no more field supervisors?

A. No, not field supervisors, field workers who were colloquially known as readers.

Q. Right.

A. That group of people who went around reading files and doing a statistical tabulation. By, I think, it was August or September, 1975, they had all found alternative employment. We had in our own vision of what was to come in a new branch organization and recognizing the work we were doing on information systems had resolved that we would engage again professional field supervisors or field consultants. In other words, going back to the same kind of system that existed in 1968 and which way I described it earlier as cyclical, we were back to a basic model that was in use or in force in 1968.

Q. But was there a sort of a hiatus period there where you had no field readers?

A. That's right, and I'll try to carry this through in terms of the dynamics of staffing through those years, and the dynamics of staffing were intermingled with manpower constraints, organizational planning and change in roles that we were attempting to introduce.

As I said in April '75 the freeze on hiring which was a universal constraint came in and by, I think, July of 1975 the Ministry determining that we would live with the organization as it existed at that time because the possibilities of reorganization were pretty handicapped by manpower constraint. Alan Gordon at that point, who was Assistant Deputy Minister of Program Development undertook the responsibility for the MR component of the Ministry's operation.

Q. The which?

A. He became Assistant Deputy Minister of Developmental Resources and his management responsibility then became the Mental Retardation Services of the Ministry, those 8,000 staff that had come to us in the Spring of '74.

The operational part of the service delivery part non-mentally retarded, was transferred to Mr. John Anderson, who became Assistant Deputy Minister of Social Services and the organization intention at that time was that we would continue with our mixture of district operations out on the field and central branches with some continuing responsibility internally.

Q. But there was a period, a hiatus between the fading away of the field readers and that type of supervision and the proposed consultant types?

A. There was a hiatus between the fading away of the field readers and the replacement of them with field consultants.

Q. Right, and how long was that hiatus?

A. It was a considerable hiatus.

Q. A couple of years?

A. Yes, it was up to the beginning of 1977. OK. Now, the reason for that considerable hiatus related to a variety, quite a variety of circumstances, not the least of which was manpower control, the reduced complement at various stages during that period, coupled with a problem that we had in recruiting. You've got to remember that when the manpower control system was introduced a commitment was made to existing staff in government that those whose jobs were declared surplus would be entitled to jobs within government and have first entitlement. So, one thing that was eliminated from time to time during that period was external recruitment, we were not able to go outside to get staff.

Q. You had to take staff inside?

A. We had to take staff inside and we also - if we were not able to find staff inside we had to go through a recruitment process to screen out anybody within the government who might have been interested in an open position before we were able to recruit outside and it wasn't until November, I think, of 1976 that we were finally able to advertise outside. There are other problems associated with that recruitment process: one of them being that we sought in our field consultants people with the equivalent qualifications and experience of an Agency local director. Traditionally in the Branch the objective was to recruit people who have had administrative and program responsibility in child welfare.

Q. Well, I understand the problems that you had but what was the net result of it really, you know, as far as the supervision of an individual society goes? I mean I want to give you an opportunity to explain your problems too, I don't mean to put you off but I'd like to get to the meat too.

A. OK, if I could just finish that point. We weren't - the delay in supervision which led to the lack of replacement of the four readers with field consultants was related to internal recruitment problems, the fact that --

Q. This was restraints?

A. The fact that we couldn't advertise externally and the fact that we were non-competitive financially with the external people that we wanted to hire and that took a considerable period of time to overcome those problems, coupled with the fact that we had to go through an exercise of re-designing the Child Welfare Branch in order to fit the existing situation at that time and gain approval for what we were hoping to do with a new organization. Every time a new organization is introduced in government it requires a significant degree of external Ministry approval. OK. The net result was that - I think I have - somewhere here is a kind of a chronology of staffing levels of the Branch through the period - well, actually through the period of '71 to '78 and this is handwritten at this point.

In 1975, to the period of August 1975, when the last of the readers left the Branch the basic professional staff of the Child Welfare Branch who were relating to the children's aid societies, and you have to remember that there are other staff in the Branch relating to other parts of the child welfare system. To August of '75 - let's go back a step. In '71 there were nine people in that category including the four field workers or readers.

Q. Right

A. In '71. In '73 there were nine as well. In '74 one of the field consultants left either in late '73 or early '74, before I went to the Ministry, and the complement of professional staff including the readers relating to Child Welfare was eight. From the period September to December in 1974 one of the field readers left and the total staffing was seven. January to August '75 it remained basically at seven. Between September and December '75 when the field readers left in August '75 or by August '75 they were not replaced and the Branch staff were four professional staff working with the agencies: that remained at four until the end of '76 and by March of '77 we had hired four additional field consultants and it was then up to eight and we also appointed a program development specialist to deal with programs because we now had to have the two sides of the responsibility, and that continued until June of '78 when three additional staff were assigned to the Branch to conduct a provincial-wide survey of child abuse cases. So that the period--

Q. You say from August '75 until?

A. Until the end of roughly December of '76.

Q. There were only four?

A. We were down to four.

Q. For the whole province?

A. For the whole province but that four is represented by the field workers. The professional staffing, the field consultation staffing, the adminstrative staffing remained relatively constant."

All of that was supplemented by one series of Mr. Charko's responses to questions which began with a question as to the role of the field consultants. That series of questions and answers was recorded as follows:

> "Q. Now, can you tell us basically, Mr. Charko, what the role and the responsibility of a field consultant is with respect to local children's aid societies and can you tell us first of all, how many of them there are?
>
> A. At the present time there are three full time field consultants and two half time field consultants. The reason I'm saying half time is because they are also supervising institutions, boarding homes and charitable institutions, another half of time.
>
> Q. And you're their supervisor, is that correct?
>
> A. And I'm in charge of field services. At the same time I supervise directly some Societies.
>
> Q. Oh, on your own?
>
> A. On my own, right.
>
> Q. Would that be the Metro Toronto Society?
>
> A. I'm involved with two Metro Societies, mainly on the program area and Mr. Magder

who's Assistant Director, deals with financial and administrative matters and I was supervising directly those two Societies from 1971 until March of 1977. Also I'm supervising directly Kent County, and partly involved with this Society.

Q. All right. How many children's aid societies do you have to so supervise?

A. There are fifty children's aid societies in Ontario at the present time.

Q. And in the years 1975 through 1976, how many were there?

A. There were fifty children's aid societies.

Q. All right. Now, I'd asked you what the role and the responsibility of the field consultant is, perhaps I might take one step back from that and ask you for what period of time has the field consultant been in operation as such?

A. Historically it goes away back probably about seventy-five years. The role I think was, it differs at the different times.

Q. Well, let's talk about modern times and let's talk about the seventies?

A. I would say really the role changed to some degree from 1965. In 1965 the new legislation was introduced, at that time the Branch had about eight field consultants. They were called Child Welfare Supervisors and it's only from 1976 the Child Welfare Supervisors begun to be called or known to be as a field consultant in a sense playing a double role of supervising where necessary and providing consultation in other types of situations. Even during that time up to I would say 1974, the field consultants were more involved directly with the, identifying weaknesses in children's aid societies, would that be in the area of programs, in the area of management and public relations, policies and so on, we would assist, would recommend at times changes in the societies. At the same time there were field unit that went to (tape inaudible) identify certain area and would bring to the attention of field consultant or myself as a supervisor of field services. Up to 1974 in most situations the Child Welfare Branch attempted to hire people who had both program experience and management experience. Up to that time mainly at the time I was hired all of us in the Branch were formerly, with the exception of one person, were former local directors. Miss Betty Graham was a local director before Rene Charboneau, Mona Nelson, senior supervisors or local directors.

Q. I see, right. Now, could you go on then to delineate the role and responsibility of the field consultant vis-a-vis each local agency, what should they, what are their duties?

A. Their duties as I say is to provide consultation and in any difficult areas of every day's operation. If society would have some difficulty, would that be staff management relationship, either the local director or senior staff might get in touch with the supervisor and ask to come up and discuss. In some cases it might be a situation that to assist in staff training. In some situations it might be to restructure the whole operation and this would be usually on invitations from the children's aid society. Sometimes is on invitation also from the board. We attempted to more and more, at least I was putting more emphasis to get actually involved with the board because our legislation Child Welfare Act really provides for involvement with local directors. There is only one reference in our legislation that says, the local director of children's aid society shall cooperate with the Director. That means with the provincial Director. There is no reference to board of directors, therefore, but at the same time as we know, the board of directors is responsible for the corporation because the corporation children's aid society, every children's aid society is incorporated under Corporations Act and the board as such is responsible for introducing policies, the hiring of staff and so on. For this reason we are not getting directly for example in hiring staffs and there have been situations where the Branch disagreed at times with the board on a selection of local directors. For this reason I always felt that we need a closer relationship actually with the board and administration and then get to the level of the line staff that, as I said, at different times this changed, because from 1974 to some degree this involvement was not as great I would say as previously because if we went to review organization because the Ministry was planning to decentralize and at the same time I would say the boards of children's aid societies more or less were saying openly and publicly even, you can read the papers from 1973, '74, '75, where you will find that either Association of Children's Aid Societies or individual boards were asking the Province, the Ministry, to provide funding, but more or less stay away and say, we are capable of providing, we have the staff, we are going to provide the service, we assume full responsibility.

Q. All right. Now, you're saying that then up to 1974 as far as let's say your own experience as being supervisor is concerned, up to 1974, there is more involvement by the local or the field consultant with local agencies, just generally speaking, than there was after 1974?

A. I would say in general, however, I have to clarify one point. If any society even if we were short of staff, but if any society wanted any assistance I always tried to come up and I think this Society can say by the time their staff came to work 9:00 o'clock, I was here by 9:00 o'clock from Toronto to attend the meeting.

Q. All right, so they could always ask and request?

A. That's right.

Q. Well fine, but you're saying that the routine, let us say, of the field consultant was shortened as opposed, you know, with respect to every local agency?

A. As far as direct visit I would say...

Q. As far as a direct visit?

A. But we tried to maintain the contact...

Q. Sure.

A. Telephone, correspondence, as much as possible.

Q. All right. Now, who was the field consultant who was responsible for the Lambton County agency in early 1970's up to '74?

A. Up to, actually there were two periods, I joined the Ministry in October of 1968 and shortly thereafter the Lambton County was assigned to me. At that time I had a responsibility for about sixteen children's aid societies and so I visit, I believe first visit was around second part of February of 1969 if I'm not mistaken, 26th of February 1969 and I made couple visits after that to, also because at that time Mr. Lovatt was named Acting Director for this Society and I had to make assessment of operation at that time and I submitted a report in 1969 I believe to the Director of Child Welfare, Miss Graham, and thereafter when Mr. Mainville joined I believe in September of 1970. From that date I have been the, I was transferred to Lambton County to Mr. Mainville and he continued to supervise this Society until he left the agency in 1975, until he left the Branch in 1975.

Q. Mr. Charko, you discussed then that in 1974 or thereabouts there was a change in attitude by the Branch or the Ministry with respect to how it would treat this local Children's Aid in terms of supervision, is that correct?

A. Right.

Q. Now, was that a Ministerial decision at that time, or how did this, how was this decision made to your knowledge?

A. I don't know if I shouldn't say sort of maybe to the degree if I can use the term, to some kind of evolution in a sense this happened, because several things really at that stage happened. We had a change of director. Miss Betty Graham left the Branch in January of 1974. Naturally if new administration takes over it usually tries to make some changes. Hugh Hanson's report was introduced in 1974 with regard to decentralizing the whole Ministry. The Ministry was looking at that point, should we in a sense sort of decentralize and assign the consultants or Child Welfare Supervisors to specific areas or should we retain a central approach to the children's aid society and decentralize into maintenance programs and so on, so this was not definitely decided, that's one reason. As I say the children's aid societies at the same time sort of felt that it's not necessary to go and review the files constantly and so on, because what we were doing at that time we would, I would say about once a year, the field workers, we would send a few workers out and they would read practically every file, particularly in smaller societies, they might read every file, check what type of work was done and then the field supervisor would go back to the society and say such and such changes in the program or at times even administration or re-structuing of an agency, this

> should take place. The societies felt that the control or at least the management I would say and the staff felt that the control on the society was too great, that maybe this society should sort of assume the full responsibility and the Province should provide the funding. The Province to some degree agreed I would say maybe unofficially, because I don't think officially we said, as of this date we are terminating such and such a unit, as of this date we won't conduct any survey. This all happened gradually, because the financial unit was left at that time from the problems that they used to come together with the field consultants to review budgets, review files, review administration and everything else. I would say that that was the reason you know, to some degree to see how the corporations would really operate individually. Then also I think the pressure from the Ontario Association of Children's Aid Societies was also in a sense under Ministry, now that you tried to decentralize, let's give opportunity for them to operate and you provide the funding."

At this point Mr. Charko spoke of his visit to the Society in December, 1977. I have omitted that portion of his testimony. It is irrelevant to the present area of the Report. Mr. Charko's testimony then continued as follows:

> "Q. In 1974 then, did you specifically instruct Mr. Mainville that his duties as far as the Lambton County Children's Aid Society would be varied and that he was not to make regular visits, or how would this philosophy of the new director have been...
>
> A. At no time I or anyone instructed me to terminate visits. I think there was sort of a limited time because of the number of staff that we had.
>
> Q. Well, let's talk about that for a moment. Was your staff reduced?

A. That's right.

Q. And when did that happen?

A. It kind of, it was kind of gradual because I would say the reorganization was not necessarily the time really when the whole thing happened, but in 1971 the assistant director of child welfare became director of Children's Institutions at that time so the position of assistant director was left vacant. When I assumed the position of supervisor of field services the previous supervisor of field supervisors, Miss Mona Nelson, left to join the federal government. At that time already there was no assistant director, but we still retained three field consultants and myself as a supervisor of field services. When the reorganization came we and director of child welfare left on January 1, 1974. Shortly thereafter I believe it was the same month, Mr. Rene Charboneau who was the child welfare supervisor for eastern Ontario, he left, he resigned. We didn't replace him because not knowing what's going to happen with the reorganization or decentralization. Then gradually the field workers we continue, we didn't have a director, only was pro tem director was made of child welfare, Mr. McLellan, from January 1, 1974 until May, I believe, May 6th and Mr. Macdonald took over as a director of child welfare. The second supervisor left, Sil Mainville then left in '75, and still we were not sure what's going to happen with the whole structure so again he was not replaced. The field units gradually left and were not replaced, so this is actually what happened, but still at no time I, as I say and Mr. Macdonald or anyone of that, you know, don't visit the societies. I tried to visit as much as possible, and I think if I'm not mistaken, only once I had to, I think it was Fort Francis or Kenora, that they asked me to come up and I had to change the date and I said I'm sorry, I can't come up at this date, but regardless, I made every effort to visit the societies whenever I could. The two Toronto societies I continued to visit on regular basis, practically weekly, on a weekly basis.

Q. Well, just so I understand then, from 1974 following up to the end of '77, how many employees left your particular area of the Branch that you did not have replaced, I think you mentioned about four?

A. Well field workers, actually there were six positions, but at different time, we had at one time we had four field workers and one unit supervisor that worked, because I was responsible for that unit, but at the same time we had a supervisor who was responsible and she was coordinating visiting to the Societies, sort of assisting me in certain areas of conducting surveys. The whole unit gradually left. Then the field consultants as I mentioned, Sil Mainville, Rene Charboneau, that was the time from '74, then Paul Siemens who was shortly sort of a sharing supervision for this Society. He left in December of 1976. At that time Mr. Magder came back to us, I believe in October of '76, who was previously Assistant Director and he came back.

Q. Well, from August of '75 to August of '76 then were you pretty well the only field consultant, even though you were the supervisor, were you the only field consultant who could have come upon request to visit this local children's aid?

A. Paul Siemens was with me as I mentioned to December of '76.

Q. And were you then, the two of you responsible for the whole province at that time?

A. That's correct, and also there was some support staff and also Mr. Macdonald sort of assumed some sort of responsibility, for example dealing with budget, because the other area, what happened at the same time up to 1974, we had a financial unit of four professional accountants and one chief accountant and three other professional accountants, that unit was disbanded. Actually also they transferred, two of them went to the Ministry of Health and one transferred to another branch.

Q. Well, perhaps this is, the historical or chronological part of this would be better to get from Mr. Macdonald, but while they were not replacing people at the Ministry, were they in fact decentralizing, did they ever get into that?

A. We never physically decentralized, we discussed the different type of models, how we can sort of coordinate the services, because to some degree we were decentralized to '74 because, for example one supervisor, Mr. Rene Charboneau, he lived in Ottawa, he never moved to Toronto and he was coming to Toronto for any meeting that I would call of the field consultants. He would come to Toronto, but was always residing in Ottawa and covering eastern Ontario, so to some degree we had decentralized kind of system. The question came out, how many people would we need to cover nineteen districts, would we relay them to district offices as we have presently or would we have one Child Welfare Supervisor let's say for eastern Ontario and relate to the Queen's Park or to relate one of the Directors, these were the things that were not really clarified as physically as I say beside eastern Ontario, we did not sort of even assign to geographical area because as far as the societies, even when the new supervisor, like when Paul Siemens was hired in '71, we assigned different societies in different areas, it was not in geographic area, but to give each field consultant a mixture of large societies, smaller societies to get to feel what sort of could be done and the different type of structures.

Q. Well, we know that Mr. Mainville prepared field audit reports or audit reports of local agencies and that these ceased in about, what, 1973-74, somewhere in around there?

A. The last society, the survey was conducted if I'm not mistaken was Kenora in June of 1975, that was the last survey that was done...

Q. What was the reason for terminating that more or less check that the Ministry would have had on the local branches?

A. I don't know if I can answer that, simply as I said there was no replacement. The staff left, the last two field workers left in August of 1975 and the third one I assigned for to do the statistics because the statistician that was doing before that was part of financial unit, statistician was transferred to my unit. At that time then I assigned one field worker to do the statistics, compiling statistics that monthly come from each society. How many for example cases, family cases, children in care, changes of status of children and so on, so that staff was not replaced and I didn't have any staff to continue to conduct any surveys.

Q. Right. So then really but for receiving, if I may use the word, a distress call from a board or from a line worker as you described them, or from the local director, you on a day to day basis as supervisor of field services would not know really how an agency was functioning or you wouldn't know let's say on a yearly basis unless you received some call, would that be fair?

A. I would say that's fair, at times in some area I might get more complaints to the Minister because we had to also deal with the complaints to the Minister about any society...

Q. You mean from the public?

A. From the public. I think at times there was sort of more complaints than in another time so I might get some feel if there were too many calls from certain areas, I might either go and try and visit society or talk to the local director and say, what's happening, suddenly I'm getting from your protection department too many complaints from the clients directly or I have situations where at times when I get the feel that there is not everything going well between the management and the social workers, like staff as we call from client staff because they will phone me to interpret Child Welfare Act, to do the other things, what at times you get the feel that worker could go to his supervisor or could go to the local director and say, you know, how do you interpret Section 20 of Child Welfare Act, such and such thing or how do you sign non-ward agreement. These were at times another kind of signal that I might get at times from the, because we get as many calls and at times I sort of used to joke with some agency's staff when they complained that they have heavy case load, I said, do you want to take half of my case load, because usually many call directly with home Queen's Park, because they sort of feel if they exhaust all avenues of resolving the conflict on a local basis, then they get either through their M.P.P. or directly to the Ministry.

Q. These field audit reports, would they be read by anybody once they were submitted, let's say, by Mr. Mainville?

A. First of all I would sort of review in order to identify because the way we decide and there were different changes, because actually one of first tasks when I joined the Ministry, at that time the field consultant or Child Welfare Supervisor used to visit the children's aid societies and ask the local director or supervisor to give five or ten files, they would read those files and then submit the report to the Branch, to the director. If in that report was some criticism the way that things were handled or certain things were identified, the staff, the senior staff at time, and this was given to the board, would then challenge and say, well that's your way of interpreting the matter and so on, so to the point that there were kind of conflicts developing between the Child Welfare Supervisors and individual agencies, and I recall specifically when I joined the Ministry they said to me, can you sit down and design some kind of survey that would be in a way to see if the children's aid societies are meeting the regulations of Child Welfare Act. For example, are they visiting, if they are not visiting what are they doing, can we identify something, so that we did the first survey was strictly on the basis if the regulations of Child Welfare Act were adhered to, then gradually we felt we need to learn something more, so we went into the area and say, can we identify for example how many cases in protection are coming for service because of alcoholic problems, how many are coming because single parents and unable to cope with the children, how many are coming for service because of mental illness. We moved to that area, the purpose for that was when we identify if we found then that let's say in northern Ontario, in specific community, the majority of cases were open in the children's aid society because of alcoholism, then we went back to the society and say, you know, don't train your workers how to find a job for the client, but train your worker how to deal with the person who has the drinking problem. So we then started to focus on specific areas. If we in another area discovered for example eighty percent, and I'm talking specifically this came out, I recall the situation, cases were referred by complaint to the children's aid society, that means police, doctors, a priest, relatives, neighbours, etc., etc., then we said to the society, and we find that the neighbouring it's in reverse, eighty percent are self-referrals and only twenty percent are complaints, then we knew in the area where there is the only true complaint people did not feel comfortable to come voluntarily to the society and asking for service. So we would then discuss with the society, how can you change your image in the community. We might raise these areas with the boards and I recall again in several situations, then this is what we did, so we decide the type of surveys that gradually we could identify the area of needs in the community. Once we identify, then usually field consultant would go to the society and deal with the director. This was in a sense a tool. We did not form the opinion. The survey in no time gave the comment and that's why then the administrators, the local directors sort of did not know really what to do with that type of situation, because they sort of felt well the children's aid societies are trying to do the job, we're trying to find the weaknesses in agencies and then I remember that some even kind of speculated, is this what the Ministry is collecting in order to find a reason to take over the children's aid, which was not as as I say initially this was the kind of impression, but later on the majority of societies were welcoming this because then we would sit down and sometime even with the board, and say, this is the area we identify, can you develop policy, what type of service you are going to provide to the community. We identify also that for example in one area when we read the files the workers in Family Service Department are carrying forty, fifty, sixty, seventy cases and then we find in Adoption Department the worker might be carrying only ten home studies, we stop, when we identify we said to the local director, can't you transfer that worker into the other unit or assign other duties, so we try then also to spread a kind of work load. We don't talk as much about specific cases, but also the same, the work load.

> Q. Now just, I'm sorry to interupt you, but I think what you're saying, you're leading up to is the fact that it appeared that the surveys were an important tool for you, would that be a fair comment, Mr. Charko?
>
> A. I think it was more important actually to the societies to identify weaknesses and improve the service...
>
> Q. Yes, but nontheless...
>
> A. And it was also important to us."

Mr. Macdonald's answer, in its many parts, supplemented by Mr. Charko's answers, demonstrates that the statement attributed to Petronius may quite appropriately be applied to the Ministry in its many stages of organization, planning and reorganization.

With all due respect to Mr. Macdonald he may have abused the adjective "cyclical" when he used it in his answer.

If he intended to indicate that there was some pre-determined pattern whereby the quantity or quality of supervision and inspection would vary at predetermined intervals and that each point in that pattern would recur at regular intervals, he did abuse the word. I am satisfied there was no such pre-determined pattern.

What did occur were variations of the quantity and quality of supervision and inspection and after all of those variations and after all of those years from 1976 to 1978 the Ministry's supervision and inspection of the societies was essentially what it had been at the outset in 1965.

To that extent there was a cyclical aspect. It had gone full circle. But it was not planned. This aspect of the Branch's operation was maintained or was permitted to wither without any apparent conscious intention or design within or by the management of the Branch or the Ministry.

But in all of that time required to get back to where it had started there was, in the

Ministry and in the Branch, the endless presence of studies, intentions, hopes and objectives accompanied by so much seeking, looking to, development, beginning, varying, altering, restoring, recommending, continuation and reorganization. Those words, in some form, are prominent in Mr. Macdonald's answers, only one of which, in its many parts, is reproduced above.

The events of 1969 and 1970 were significant. In those years, if I correctly understand Mr. Macdonald's testimony in conjunction with that of Mr. Charko and Mr. Mainville, six of eight professional social workers then employed by the Branch as field consultants "left the Branch."

They were not replaced. No one offered any explanation for their leaving. From Mr. Macdonald's choice of words, and his manner of testifying satisfied me that he chose his words carefully, it would seem that those social workers left the Branch of there own volition and that their employment was not terminated by the Ministry or Branch as part of any specific intention or plan of the Branch to dispense with their services.

Again, from Mr. Macdonald's choice of words, it is apparent that, the field consultants having "left," the Ministry did consciously decide not to replace them with professional social workers. The Branch did consciously decide to replace those professional social workers, most of whom had served as local directors of children's aid societies, with "readers" who had no such experience or training. On Mr. Charko's testimony the "readers" were trained to conduct surveys, but they did not have the training or authority to deal with issues relating to the quality of services provided by the societies.

Mr. Charko's words, near the end of the first portion of his testimony reproduced above and near the beginning of the second portion thereof, support my assessment. He spoke of the absence of anything done officially by the Ministry. He indicated the termination of visits by the "readers" was the result of "unofficial agreement" and happened gradually.

He did not identify the parties to that "unofficial agreement." I infer it was between or among the Ministry and its staff. The societies were not parties to any such "agreement." The societies became aware of the effect of that "agreement" only if they inquired of the Ministry to learn when the "readers" would visit. Only then did they learn that there would be no more visits by "readers."

Mr. Charko spoke of "some kind of evolution." He spoke of the Hanson Report and its recommendations. He spoke of the Ministry's consideration of those recommendations and that "[it] was not definitely decided."

At another point when asked the following questions he made the following responses:

> "Q. But to take this further, would you agree with me that the field unit was not simply dissolved just like that?
>
> A. No, it was not dissolved.
>
> Q. And that the field workers ceased to function probably by virtue of attrition as much as anything else?
>
> A. That's correct."

Mr. Charko's words in another area of his testimony indicate that, while the Ministry was "unofficially" terminating the visits by the "readers," the financial reviews and controls of the societies by the Ministry continued.

The Ministry's stress upon financial matters was demonstrated in other areas, such as the testimony as to the number of memoranda regarding financial matters which were sent by the Ministry to the societies.

Mr. Charko's testimony referred to the nature of the relationship between the Ministry and the societies. He said The Child Welfare Act required the local director of each society to cooperate with the Director appointed for the purpose of that statute. At the same time the local director was responsible to the board of directors of the society for the administration and enforcement of the statute and regulations made thereunder.

Mr. Charko seemed to feel that, especially from 1974 onward, there had not been a satisfactory relationship between the Ministry and the boards of directors of the societies. He related some of that problem somehow to the Ministry's plans in that period to decentralize and to some desire of the societies for autonomy.

From the testimony upon the Inquiry I am satisfied that there was very little direct contact between the Ministry and the Board of Directors of the Society. That was so even in 1974 and earlier years when, on Mr. Charko's testimony, the Ministry had more involvement with the societies through the field consultants and "readers."

Mr. Charko himself had been the Ministry's Child Welfare Supervisor or Field Consultant with responsibility for supervision and inspection of the Society from about the time of his employment, in October 1968, until Mr. Mainville was given the responsibility in or about September, 1970. Mr. Charko's first visit to the Society was late in February 1969 to assess Mr. Lovatt's performance as the Acting Local Director of the Society. He said he "made a couple of visits after that."

Assuming the accuracy of that testimony, it is difficult for me to regard three visits to the Society over a period of about twenty-four months as being very much in the way of contact. It would be even less in the way of supervision and inspection. That is particularly so when at least the first visit in February, 1969 had the one very specific purpose to assess Mr. Lovatt's performance.

Mr. Mainville in his testimony spoke of making perhaps two visits each year until 1973 to each of the fifteen to twenty societies for which he was responsible as one of the Branch's child welfare supervisors or field consultants.

The Society was one such society. Each visit to the Society was for one day or, occasionally one day and part of the next. In 1974 Mr. Mainville made only one visit to the Society. In

1975, one of the year's of Kim's life, he did not visit the Society. He resigned from the Ministry in January, 1976. There was no testimony to indicate that he or his successor or any other employee of the Ministry, let alone any field consultant, visited the Society in 1976.

In cross-examination, Mr. Mainville expressed his opinion as to the magnitude of the task imposed upon the Child Welfare Supervisors (Field Consultants) and the Supervisor of Field Services. That occurred in the following series of questions and his responses thereto:

> "Q. I understood in 74-75 there were the two Child Welfare Supervisors for all of the agencies in the Province namely 50 or 51 whatever the number was.
>
> A. Yes, I believe it was 50 at that time.
>
> Q. And the 15 would have been the previous period?
>
> A. No, sir. Out of 50 children's aid societies I was the designated Child Welfare Supervisor for about 15 of them.
>
> Q. And that was '74 '75?
>
> A. Yes, sir.
>
> Q. But were there four Child Welfare Supervisors in '74 '75?
>
> A. No, in '74 '75 there were two Child Welfare Supervisors. In addition, as I mentioned earlier, there was also the Supervisor of Field Services who also assumed responsibility for a number of societies.
>
> Q. So you would have 15 and the other 35 would have been broken up between the other Supervisor and your superiors? The three of you would have covered the 50 societies?

A. Yes. I think with the exception, you would have to verify this with the Ministry but I think with the exception of perhaps maybe the two Toronto agencies who might have been covered by the Assistant Director of Child Welfare I'm not absolutely certain of them.

Q. I see, but 15 of them were your allotted share?

A. Approximately. I think as a matter of fact in '74 and '75 that after the Child Welfare Supervisor, the third Supervisor resigned, it might have been closer to 20 societies, I would think.

Q. And I gather that you would be the first to agree that this was a monumental task that one man could not possibly perform the supervision of that many societies?

A. No, certainly, sir, that's true."

Mr. Mainville testified that when he joined the Branch as a field consultant in September, 1970 its staff, including himself, consisted of the Director of Child Welfare, an Assistant Director of Child Welfare, a field services director, three field consultants and six field workers. Those latter were the "readers."

Mr. Mainville's practice in relation to his visits to the Society was to telephone Mr. Lovatt to advise him of the upcoming visit and to inquire if Mr. Lovatt wished to discuss any particular area of interest or concern. That enabled Mr. Mainville to prepare himself to be helpful to Mr. Lovatt and the Society in any such area. One such visit each year included a meeting with the full complement of the Society's social work staff to discuss the results of the most recent survey conducted by the "readers."

Each of Mr. Charko and Mr. Mainville testified that, during the period he was responsible for supervision and inspection of the Society, he was available to Mr. Lovatt for consultation by telephone if Mr. Lovatt cared to call. Mr. Charko seemed also to indicate a willingness to visit the Society on request.

In my view no visit in the years 1975 and 1976, one visit in 1974 and two visits in each of the years 1971, 1972 and 1973 does not constitute adequate supervision and inspection of the Society by the Branch. That is even more apparent when each visit was for at most one and one-half days and when one visit in each of the earlier years was intended to discuss the survey conducted by the "readers."

The visits by the "readers" up to 1974 did not enhance any supervision or inspection of the Society by the Ministry. Their function was to complete a survey of all of the societies.

The nature of the subject matter of such surveys was indicated in the portion of Mr. Charko's testimony reproduced above. It was also discussed by others who testified. Primarily the surveys were designed to gather statistical information and to ascertain compliance with the Regulations made under the Act. The "readers" were just that. They read files, but they were not trained or qualified to assess the quality of the services provided by the Society.

In any event the surveys by the "readers" ceased in 1974 and 1975. The "readers" did not visit the Society during Kim's lifetime.

Various witnesses testified that the "readers" might have detected some problem or error in the management of Kim's case if the visits by the "readers" to the Society had been continued to 1975 and 1976. But even that possibility was dependent on many factors. The subject matter of the current survey would have to be such as would require the "readers" to see files of cases of categories including that into which Kim's case fell. Then, if the files of all cases in those categories were not to be read, Kim's would have to be one selected at random. The untrained and unqualified "reader" looking at her file would have to recognize a problem or error in the management of her case and would have to regard it as a problem or error serious enough to merit mention of it by the "reader" to the child welfare consultant in the Ministry.

It seems to me that the possibility of a positive conjunction of all of those factors would be remote. No one testified that any "reader" had ever reported upon any matter beyond the scope of the specific survey undertaken by the "readers" in the given year.

I entirely discount the possibility that continuation of the system of visits by the "readers" would have been of assistance to Kim.

The suggestion that the visits by the "readers" tended to cause workers to get files in order before such visits, while perhaps valid, does not alter my view.

Nor does the suggestion that, apart from seeing Kim's file, the "readers" might have heard of Kim's case from a worker in the Society. It was suggested that that might occur casually or even intentionally on the part of the Society's worker. Until September, 1975 few in the Society were aware of Kim's case and none of them was interested enough to ensure that it was properly opened, recorded and managed. It is not likely any of them would have felt it merited comment to the "readers."

After September, 1975 the Ministry was aware of Kim's case. The Society, as required by the Ministry, informed the Ministry of it by way of a report dated September 8, 1975 and signed by Mr. Lovatt. That report did not cause the Ministry to become directly involved in Kim's case or to take any action with respect to it during Kim's lifetime, apart from a form "communication" seeking information as to the status of the case in April, 1976.

The availability of Mr. Charko and Mr. Mainville by telephone to answer any question raised by Mr. Lovatt contributed in no way to the Ministry's supervision and inspection of the Society. They would hear of only those matters that Mr. Lovatt wished to discuss. They would not hear of any matter he chose not to discuss or of which, for any reason, he was unaware.

There was no testimony to indicate that anyone from the Branch visited the Society in 1976. Thus, in the two years during which Kim lived, 1975 and 1976, there was no such visit. The Branch relied entirely upon whatever was reported to it by the Society.

In my opinion, in 1975 and 1976 during Kim's life, the Ministry, the Branch and the Director appointed for the purposes of the Act did not fulfill the statutory duty to supervise the Society and to inspect its operation and records.

From 1969 and 1970 the Branch did not have sufficiently trained experienced and qualified personnel to conduct any meaningful supervision and inspection of the societies. The visits by the "readers" until 1974 may be described as one facet of inspection, but it was a severely limited inspection, directed only to specific areas of the records of the Society and conducted by persons who were not qualified to assess the quality of the services delivered by the Society. Even that limited inspection was not performed during Kim's life.

In many ways I see an analogy between Mrs. Lo of the Society and the "readers" of the Ministry. Each may have had some training or education in some somewhat related field, although Mr. Macdonald said the "readers" were not trained in social work. Each may have had the potential to become a qualified social worker. Each might have observed things without realizing the significance, meaning or importance of what was observed.

The analogy ends there because even the Ministry did not expect the "readers" to realize the full significance of what they observed. Even the witnesses from the Ministry acknowledged that if, by chance, the "readers" had seen a file such as Kim's, it would not necessarily follow that they would recognize any problem or concern with it and report upon it. As Mr. Macdonald put it:

> "[the] standard reports [of the "readers"] were highly structured - they don't highlight cases specifically in those terms, they would have presumably raised with a field consultant responsible for the society the case if they were sensitive to the fact that it was a significant case."

Apart from whatever forms or reports were forwarded by the Society to the Branch there was no inspection of the operation and records of the Society.

In saying that I am being generous to the Branch because the testimony indicates that not even reports made by the Society to the Branch in 1975 and 1976 were inspected in any real sense.

One such report related specifically to Kim. It was prepared upon a form supplied by the Branch entitled "Report on persons allegedly causing physical ill treatment of a child." It bears the date of September 8, 1975 and Mr. Lovatt's signature.

That report sets out the incident of August 30, 1975. It refers to there having been a "Previous similar complaint June 1975." It shows that the Society had been involved with Kim or her family before. It states that Kim was

> "admitted for the third time with fracture and bruises, August 31st 1975."

That report was made to the Branch in purported compliance with its requirements in connection with its so-called Child Abuse Registry or Central Registry of such reports or cases of abuse of children.

That Central Registry had been established by the Branch in about 1966. Mr. Macdonald testified as to its establishment and operation. The following is an extract from his testimony in that regard:

> "MR. McRAE: Maybe we could find the exhibits. Probably in the main file. The two reports that you referred to are Exhibits 112 so that we have all the reports that you referred to - you can keep your originals.
>
> A. Now, the reason I wanted to ensure that all of those reports were within the same kind of exhibit was because they are reports related directly to what is known as the Child Abuse Registry. It is not really a Registry but rather it is an Index

administered by the Branch, designed in the mid-60's or in 1966 initially as an instrument to provide a central index of alleged physical abusers, and the purpose of this index was to provide a mechanism by which people who moved from one jurisdiction to another and who repeated physical abuse and were detected by children's aid societies in two different jurisdictions could be identified and the children's aid society in the district to which they moved would be alerted to the fact that there was a previous allegation of child abuse.

Q. So it's a central registry, if there was a child abuse situation in Sarnia the Local Director should refer to your central registry to find out if these people had been involved in child abuse before?

A. Yes. That report - the first report I believe was September 8th, 1975, would have gone to this central index had the alleged abusers been the subject of a previous report in another jurisdiction then the society would have been alerted automatically and would have known that there was some previous history of abuse. I think this was established as an administrative tool purely for that purpose; there was in the 60's an assumption that child abusers typically moved from jurisdiction to jurisdiction in order to avoid being detected and this index was established to attempt to reduce that at least happening in Ontario. In the end result statistically it doesn't show to be a legitimate assumption as a matter of fact.

Q. They don't move that frequently?

A. They don't move that frequently, no. Now, these reports go automatically to the central registry, they are cross-checked against any previous report and the society is notified and follow-up reports are then requested in order to maintain a complete file.

I think - we've got to look at it in the context of the Child Welfare Act which does not at the moment provide for a central registry or central index of child abuse. Section 41 of the Act requires every person having information in relation to a person, etc., etc., to report that information to a children's aid society or a Crown attorney. There's no mandatory provision there for the children's aid society or the Crown attorney, or both, to report to the Ministry. There is no definition of child abuse within any kind of narrow context which would give a reference to that and help the societies determine what should and should not be reported.

Q. And also there's no penalty provided for not reporting?

A. There's absolutely no penalty for not reporting.

Q. It's that kind of a section without much teeth.

A. So, the - it is, this section of the Act. Now in a moment I'll get into what we're doing about that but I want to pursue a little bit, the history of this index.

Q. Alright, because I think it's important that we know what the index means.

A. Using our own memorandum file and correspondence file the first initiative of the Branch - this Section 41, by the way was just introduced into the '65 Act, prior to that I think there was nothing in reference to child abuse. In 1966 the Branch at that time provided reporting kinds of forms that could be used to document reports for the Crown attorney or the children's aid societies and it requested that a copy of the forms be sent to the Branch so that an index may be kept of these individuals, simply an index.

In 1967 there was another memorandum related to Section 41 of the Act and that had nothing to do or very little to do with the index itself but it requested the children's aid societies to work in cooperation with the local community services including hospitals, the police, the Crown attorney and so on, and there was a reminder in that memorandum that copies of the alleged physical abuse form should be sent on to the Ministry.

After that, the registry was left almost in limbo, the societies reported as they determined what was a legitimate case to report because there were no specific defined uses of the index other than tracking down people who moved and a small number of reports would be reported annually to the registry.

In 1972, I believe, the Ministry commissioned a research report on what's happening in child abuse in Ontario from a Dr. Cyril Greenland, and among his recommendations was the strengthened and redesigned - or at least recommended that the Ministry give some consideration to strengthening and redesigning the registry. The Ministry then at that point set up a Ministry committee on child abuse and began to look at the whole area of child abuse, not only the registry but all aspects of child abuse and to look to what the Province has to do to deal with the generalized problem of child abuse. As a part of that Ministry activity a subcommittee worked on the registry along with a number of other issues and we sent -

Q. Were you on that subcommittee?

A. No, I wasn't on the subcommittee, I was on the Ministry committee itself. We sent to the societies in July of 1975 a questionnaire on child abuse, but in that we also included a general understanding at that time of what the registry was in a document entitled "the purpose of a child abuse central registry" and these were speculative in many cases.

Q. This is in 1975?

A. This is in 1975, the 8th of July.

Q. As a result of Professor Greenland's report of 1972?

A. It was an indirect outcome of Professor Greenland's report which led to the formation of the Child Abuse Committee which undertook this as a part of their working responsibility, and at that time the understanding of what the use of a registry was one of ensuring previous allegations of abuse in another jurisdiction are brought to the attention of the reporting society, that was the one original intent.

Q. Right.

A. Also considered at that time was how the information from a child abuse index or registry might be used in general terms, and there were four areas that were discussed in that speculative paper; program development, research, staff training, public education. There was never in our understanding of central registry a monitoring role for individual management of individual cases. The registry as it existed was also operated again as an administrative tool within the context of growing public conern about confidentiality, growing public concern about people's names going into an information bank without substantiated charges because it's an allegation, it's alleged physicial abuse.

Q. Right.

A. And we were concerned that this is not the kind of information that becomes a case management tool, that there had to be other ways to tackle the problem. There is considerable dispute all over the world as to the value of a central registry, if it's formally defined, but we have now and recently taken the position and included in Bill 114 a mandated legislated central registry which will require a large number of people, including professionals, to report under a penalty and sets out protective procedures for people whose names go on to a registry. They have to be notified their name is on a registry, they have the rights to appeal that - the insertion of their name on a registry and the registry then and will become a very useful tool for the case management, for the monitoring of individual cases.

Q. This is in the bill which was -

A. This is in Bill 114. In addition to those guidelines both philosophical standard and administrative guidelines are being created in the context of this particular piece of the legislation to ensure a viable useful registry.

At the time these reports were submitted they were submitted to an index with a very single purpose managed by clerical staff whose responsibility was to link up previous reports and to collect some follow-up reports for the purposes of the registry so that the registry could report on the service."

Even in relation to the Central Registry there was more evidence of the presence of the phenomenom described by Petronius.

Dr. Cyril Greenland and others, funded by the Ministry, made a report to the Ministry in July, 1972 after a two year study of child abuse in Ontario. That report was published by the Ministry in November, 1973 under the title "Research Report 3 Child Abuse in Ontario." For ease of reference I shall call it the "Greenland Report."

One chapter of the Greenland Report is entitled "Legislation And The Central Register." That chapter is reproduced as Schedule 2-J to this Report.

As early as 1972 the Ministry was advised of the interpretation and enforcement of the legislation requiring persons to report cases of abuse of children. At the same time it was advised of problems with the maintenance and operation of the Central Registry.

Despite the Greenland Report and despite all of the other study and activity indicated by the testimony of witnesses who were on the staff of the Ministry, no changes in the legislation relative to the Central Register were effected until the introduction of Bill 114, and its subsequent enactment in 1978 two years after Kim's death.

The Greenland Report contains the following paragraph:

> "In conclusion, the following points must be made about the Central Register:
>
> 1. Not all cases of child abuse are being reported by the responsible agencies.
>
> 2. When cases are reported, the data are frequently incomplete.
>
> 3. The fact that the staff of the C.A.S. makes only sporadic use of the Register suggests that the staff places little confidence in its value.
>
> 4. If the register is to serve a useful function, guidelines defining child abuse will have to be issued to all reporting agencies.
>
> 5. In the future the staff of the Child Welfare Branch must take a more zealous approach to matters of documentation to improve the quality of the Register.
>
> 6. Child abuse is coming to be regarded as a gross symptom of family distress, rather than a serious result of an individual's pathological condition, so the Register itself should be reorganized to reflect this. In the future, emphasis should be placed on

> information relating to family function and dysfunction instead of on the isolated abusive episode."

To my mind the testimony upon the Inquiry provided a basis for much more criticism of the Central Registry as it existed and functioned during Kim's life in 1975 and 1976.

I have already written that the Society sent to the Ministry a report of Kim's case dated September 8, 1975.

That report clearly showed that a police investigation was continuing and that later action by the Society would, in part, depend upon the results of that investigation.

In a box on the form, immediately adjacent to the box containing the date of the report and Mr. Lovatt's signature there is a printed request that the Society "notify the Branch of any change in the status of this case, especially charges."

The manner in which the Branch then dealt with that report is a shocking example of inactivity which, nonetheless, gave the impression that the Society's report was receiving attention by qualified personnel within the Ministry. That demonstrated the accuracy of Mr. Macdonald's testimony set forth above that:

> "After that [1967], the Registry was left almost in limbo, the societies reported as they determined what was a legitimate case to report..."

In June, 1975 the Society had not made any report to the Central Registry in respect of the report of abuse to Kim. There was no testimony that anyone at the Society had even considered the need to make such a report. On all of the evidence as to the view of the Society's personnel involved with the case in June, 1975, it would appear that the absence of a report to the Central Registry was merely a part of the entire absence of appropriate activity by the Society in respect of the case.

The report made in September, 1975 mentioned the June, 1975 incident and two hospital admissions prior to August 30, 1975.

The persons in the Ministry responsible for the maintenance of the Central Registry had the rather grandiose title of "Review Unit." One of Mr. Charko's answers as transcribed upon the Inquiry describes some of the function of that Review Unit as follows:

> "A. The Branch received, [the Society's response to the Branch's communication dated April 14, 1976] I don't think I received directly because the reports come to the, we change our policy and our procedure. Usually all child abuse reports have been coming directly to, we have a special unit that deals with documentation. It's called review unit. The review unit all for example, adoption documents go to that unit, correspondence from other countries, correspondence between the different provinces and so on and that unit also receives all child abuse reports. If there is some unusual thing, sort of requests and so on in any of these reports, then they would bring to the attention of field supervisor. Otherwise it's filed, it's compiled information is recorded on [McBee] (tape inaudible) system which is a card and acknowledged."

If I correctly understood some of Mr. Charko's further testimony, the Ministry, upon receipt of the report from the Society, opened a file in the name of Kim and the report from the Society was placed in it. I gather a copy of the report would be placed in the file maintained by the Ministry for correspondence with the Society.

In 1975 the Ministry's Child Welfare Supervisor or Field Consultant assigned to have responsibility for the Society would have been apprised of the report from the Society only in unusual circumstances. An example of such unusual circumstances would have been a specific request by the Society for information or advice. In one of his responses Mr. Charko said the Ministry's receipt of such a report would not, by itself, lead to any special attention to the case by the Ministry

> "because in these situations as I mentioned, it's sort of, it's up to the Society to take action or ask us for specific information or action."

The title of "Review Unit" is a misnomer. The members of that unit are classified as clerks in the Government service. They were not trained or experienced social workers. Mr. Charko's testimony was to the effect that the Review Unit merely read reports such as those submitted by the Society under date of September 8, 1975 and in April, 1976. Then, unless there was something which they recognized as being "unusual", they merely transferred some basic information from the report to an index card, filed the report and placed the card in the index.

That is not a review in any ordinary sense. It is merely a reception and recording of incoming mail.

If anything more was expected of the Review Unit I am struck by the similarity of their position to that of Mrs. Lo at the Society. In testimony Mrs. Lo was described as being in over her head. So were the Review Unit if they were expected to recognize anything unusual in any report unless the author of the report clearly pointed out the unusual feature, as by making a specific request for assistance or information. The Review Unit had no qualification to fulfill any such expectation.

There was no testimony to indicate that the Review Unit found anything unusual about the Society's report of September 8, 1975 or that any qualified social worker among the Ministry's staff was aware that the Society had filed that report.

Mr. Charko, who was then Supervisor of Field Services of the Branch, a position he had held from August, 1971, denied that he had been informed of that report. As Supervisor of Field Services he was responsible for supervision of Mr. Mainville who was the Ministry's Field Consultant responsible for the Society from 1970 until January, 1976. Mr. Mainville also denied that he had been made aware of

Kim's case and the Society's report thereon to the Ministry.

In September, 1975 the only result that flowed from the Society's report was that a file on Kim was opened and an index card was prepared. No one with training, experience and skill in child welfare matters, especially child abuse, was aware of the report or of the case.

In saying that I am aware that the head of the Review Unit had been employed, perhaps 20 years earlier, by a children's aid society. The nature of that employment was not disclosed. The nature of her qualifications as a social worker, if any, were not disclosed. She was classified as a clerk in the Government Service. I presume she was trained and experienced in clerical, not social work duties.

Mr. Macdonald in addressing the question of the function of the Central Registry in 1975 and 1976 said:

> "At the time these reports were submitted they were submitted to an index with a very single purpose managed by clerical staff whose responsibility was to link up previous reports and to collect some follow-up reports for the purposes of the registry so that the registry could report on the service."

Questions to and responses by him continued as follows:

> "Q. Well, I have some difficulty in distinguishing between the local Society preparing an allegation of a battered child syndrome report for the Ministry and the Ministry feeling that because of confidentiality they can't do anything about it. Do you understand that problem that I have in resolving the difference.
>
> A. I don't think that's the point I am trying to make. It's not a matter of not being able to do anything about it, it's a matter that the system was not designed to do anything about it because the system was

designed to operate an index only and the procedures just weren't there to do anything about it.

Q. Well, I think clearly that's your main point. Certainly in '75 there was no procedure there to monitor these cases because they were reported?

A. That's correct.

Q. Through to the Ministry --

A. We did not have professional staff reading between the lines to determine if intervention was required."

"HIS HONOUR: ...I imagine I probably have a question or so, Mr. Macdonald, although some of my notes have probably been covered by various periods of cross-examination.

With reference to the abuse registry as it existed in '75, '76.

A. Yes.

HIS HONOUR: I gather from your testimony, and perhaps from the testimony of others as well, that the Ministry has recognized that that was not a very satisfactory operation, or at least it didn't produce particular results as it was used, but I had the impression that while there was a lot of discussion about this being used as a tracking mechanism that really it was not a tracking mechanism from the point of view of finding out where potential abusers are, but simply to let the Ministry know after the fact of abuse, that it was not a preventive procedure, it was just a recording of a past event. Is that correct?

A. I think that's quite accurate, Your Honour, I think it was never designed to be a monitoring mechanism, it was designed and I'm not sure I would call it a tracking mechanism but its primary function was to ensure that an alleged abuser who may have moved from one jurisdiction to another and had then become a second alleged abuser the

second jurisdiction would be able to have preceding information and would be able to rapidly locate any available information that might have been available...

HIS HONOUR: But...

A. ...but that was the design.

HIS HONOUR: Would the Ministry or that Branch of the Ministry responsible for the maintenance of this registry if a second allegation of abuse came in would it then as a matter of record notify the second reporting agency that there were prior...

A. Oh yes, that was the one designated action that took place, and I think I mentioned yesterday that at the time it was established in the mid-60's there was an assumption that abusers moved from jurisdiction to jurisdiction.

HIS HONOUR: I recall that.

A. Really they don't, they may go from hospital to hospital or doctor to doctor but I believe it was the number of situations which required a feedback of the sort that it was designed for was 2/10th of 1% of the alleged abusers appeared in other jurisdictions, it was not an (inaudible)."

Dr. Herbert Sohn said virtually the same. The questions put to him and his responses were:

"Q. Well perhaps we are just not on the same wavelength. What I am concerned about here is the fact that in these reports you or your working cohorts found dangerous situations which you brought to the attention of the Director of Child welfare. Am I correct?

A. Yes.

> Q. The point is that up to the time [after June 1, 1976] you and your cohorts were delegated to read these files there was no systematic review of them by professionally competent people within the Ministry within recent times who might discover a certain dangerous situation which the Director of the Child Welfare Branch could bring to the attention of the local director and back-check of it.?
>
> A. There was no professionally trained person responsible for the review of reports that came to the Ministry."

I prefer that testimony to Mr. Charko's which was transcribed in the following form:

> "Q. Now, you made mention this morning sir, that when this form [report of alleged abuse of a child] was received it was read by someone, I hope?
>
> A. In the Branch, in the review unit.
>
> Q. Well, are those the clerical staff that are there?
>
> A. They are in a position, I believe they are classified as cleric 4, cleric 5, reviewers. They're quite familiar with the type of cases and social work and so on."

Mr. Charko was not helpful in that response.

The head of the Review Unit did send to the Society a form entitled "Communication" dated April 14, 1976, about seven months after the Society's report dated September 8, 1975. That form simply gave the names of Kim and her parents as the Branch's file number. The form contained several boxes, each indicating the particular "communication." The only box checked was the one reading "we would appreciate a report on the current status of the case." It was not signed by anyone at the Ministry, but had a post script mentioning the Society's report of September 8, 1975.

The form also contains a space for reply. That reply was completed in typewriting and it was signed by Mr. Lovatt. No date was shown, but there is a handwritten note thereafter as follows:

"Entered in child abuse registry 7/5/76."

I take the latter to mean May 7, 1976, but that was not made clear.

From early September 1975 until mid April, 1976 the Society's report to the Central Registry received no attention from the Ministry and provoked no action by the Ministry. In mid-April a simple request for a report on the current status of the case was mailed to the Society. What caused that was not stated in testimony. It would not be beyond the realm of possibility that the Review Unit felt that the reference to the original report to the application for wardship and the unfinished police investigation and pending charges required some further report and that the passage of about seven months was sufficient to enable the Society to make that further report.

The existence of the Central Registry with all of its trappings of reports and Review Unit was meaningless and worthless as it related to Kim.

From the testimony upon the Inquiry and from reading the Greenland Report and the subsequent Garber Report of 1978 it would seem that the Central Registry, as it existed at least to 1978, was an ineffective device.

The full significance of that criticism of the operation of the Central Registry as it affected Kim is realized by an examination of the evidence of various experienced and qualified social workers.

So that readers of this Report might appreciate the basis for this area of testimony, the Society's report to the Central Registry dated September 8, 1975, the subsequent "communication" from the Branch dated April 14, 1976, with the Society's reply thereto endorsed thereon, and the Society's second report to the Central Registry dated August 11, 1976 are set forth in Schedule 2-S, 2-T and 2-U to this Report.

One such witness was Mr. Charko. He testified that he had not been aware of either of the documents prepared during Kim's lifetime. He had seen them before testifying. He was asked a number of questions and replied as follows:

> "Q. Did you find something unusual in this? [the "Communication" of April 1976]
>
> A. After I read everything about the Popen case, what unusual I found on this form that the, it appears that the Society had suspicion that Mrs. Popen was abusing the child all the way through and not Mr. Popen.
>
> Q. Right. If you'd seen this, let's just say this had crossed your desk back in April of '76 and you didn't know anything about the Popen case, would you be concerned about this memorandum?
>
> A. If that particular situation, or that type of situation was brought to my attention and if I knew that other person was tried I would have discussed this with the Society...
>
> Q. Yes, all I want to know is...
>
> A. ...this particular case I haven't done because it was not brought to my attention."
>
> "Q. ...All right, but in any event if that had come across your desk in April of '76, you might have reviewed the whole Popen matter?
>
> A. That's possible.
>
> Q. There is not much doubt about that, is there? You would have reviewed it, wouldn't you?
>
> A. I would have."

Another such witness was Mr. Macdonald. He was explaining that, in 1975 and 1976, the Ministry did not consider the Central Registry to be a means of monitoring cases of child abuse. He was asked the following question and made the following reply:

> "Q. Well, all I want to know is this, Mr. Macdonald, if that Exhibit 115 ["communication" dated April 14, 1976 and the Society's reply] had been sent to you personally as the Director of Child Welfare, it just somehow landed on your desk, was that the type of thing that the Ministry would have sent one of their field consultants out to look into?
>
> A. No, but we may have had - not necessarily sent somebody out but we may have had - if a field consultant had been given this report then I would suspect the field consultant would contact the Society to determine what they were doing and what additional details were necessary."

Dr. Sohn was another witness whose testimony was to similar effect although some of it did not pertain specifically to the documents relating to Kim. As the Co-ordinator of the Ministry's Child Abuse Program he had undertaken, after his appointment to that position on June 1, 1976, a review of the Central Registry and its utilization. He said:

> "I might add that there has been since the period that we have established the Child Abuse Program, [after June 1, 1976] there has been a more intense use made of the register in that in our review we couldn't help but come across information that we felt we had to draw particularly to the attention of the Director of the Child Welfare Branch and the Director has utilized our staff extensively in assisting agencies, societies and his own staff in working with cases that relate to that register.
>
> Q. Well, without putting too fine a point on it were you more or less delegated to review this register to make sure there were no more latent or incipient Popen situations dotted around the province?

A. My mandate was not stated that way.

Q. No, I know but............

A. It was simply to review and to make recommendations where appropriate for an improvement in the register.

Q. But you have said that by reason of information which you came across in the register you brought the theme certainly to the attention of the Director of the Child Welfare Branch. I would assume from that, rightly or wrongly, that you pointed out to him some danger situations, or dangerous situations which you recognized from the reports?

A. That's true. I should quickly add, because I don't want to take undue credit, that some time before I did that on specific issues a report had been prepared for the Ministry by Professor Cyril Greenland that pointed out some of the problems related to the register, and a report that was published by the Ministry and circulated widely in 1973 entitled "Child Abuse in Ontario" - not a very novel title but it did the job, and that report was issued to all children's aid societies and other interested agencies across the province. One of the strong findings, one of the strong concerns raised by Professor Cyril Greenland was that there was not sufficient reporting, that there was far from sufficient co-ordination and co-operation between agencies and professions across the province.

Q. Well was his report more oriented towards statistics as opposed to the fact that the Ministry would not be able to appreciate individual serious child abuse cases from the type of reporting that was being done?

A. You are correct, and of course his report had to deal with cases, but you are correct that his report did not reveal names or particular situations or names involved with particular cases.

Q. Well perhaps we are just not on the same wavelength. What I am concerned about here is the fact that in these reports you or your working cohorts found dangerous situations which you brought to the attention of the Director of Child Welfare. Am I correct?

A. Yes."

Questions relating specifically to Kim's case were put to and answered by Dr. Sohn as follows:

"Q. I have shown you at the recess exhibit #112 and a portion of exhibit #74, which are reports from the Lambton County Children's Aid Society to the Ministry of Community and Social Services on the ministerial form. These reports are dated August 30th, 1975, and April 14th, 1976. Have you had an opportunity of reviewing these reports?

A. Yes I have.

Q. Had you been, in the position in the Ministry to be reading such reports and attempting to advise the local children's aid, as indeed the Field Consultants now attempt to do, as on the child abuse question here, what if any recommendations would you make - now firstly, would you be in the position where you have some concern reading these reports as to the safety of the child and her being returned to the home.

A. I would have a great deal of concern about the safety of the child.

Q. All right, would you please outline why, having regard to these reports?

A. The first report indicates that this is the third incident in which this child has been admitted to the hospital with fractures and bruises. I would be very much concerned about how many incidents prior to this that were not known to this particular hospital. I would want to know a lot more about what can be found out concerning that family and its relationship, particularly to that child. I cannot find in this report any indication that that has been attempted.

Clearly there is a statement here that subsequent action will be dependent on police investigation and parental co-operation. I would think that in addition to the police investigation it is extremely important for a social investigation to have been conducted and a psychiatric investigation with both the mother and father. Unfortunately a psychiatric investigation was done only with the father. Clearly we have incidents, have experience that one parent will try to cover for another parent and clearly reflected in one of the reports here the police expressed that concern that it is really the mother they should be concerned about rather than the father.

Q. Well then based upon those reports you would have wanted to have been satisfied in a good many more areas than apparently the local children's aid gave its attention to before this child would be returned to the home?

A. In terms of what is reflected in these two reports, yes.

Q. And you and I have agreed, have we not, doctor, that dealing with this particular case of Kim Anne Popen how valuable it would have been if they had been monitoring the reports that they were receiving from the Children's Aid Society?

A. Yes, I agree.

Q. Because a professional like yourself, a professional like other professionals we have seen has said we would have been really concerned if we saw that report in April, 1976 coming before us we would have investigated it.

A. I would agree with you. I would be concerned, though, that a professional in the local scene would not be concerned about that. You will realize that if you are talking about people locally, training, professional people locally, having to rely upon experts in some central community to ensure that they have a professionally competent practice, then we are in trouble. I think the monitoring can help and should be there but it should be there not as a policing per se, but be there as a support.

Q. Well it is valuable in this function...

A. Yes.

Q. If the professional at the local level is blowing it, there is another safety check. Wouldn't you agree with that?

A. I think the safety check would be useful. I would hope that the professional locally would not fall back upon that. That the professional locally would so develop his or her practice as to be self sufficient in the protection of children.

Q. Doctor, throughout these hearings it appears to me that sometimes it becomes difficult for people in Toronto to understand people on the local level may not be doing their job. Now if one looks at those reports with a view - and maybe that professional at the local level has lost his or her expertise and made a wrong decision - it becomes a valuable piece of information doesn't it?

A., Certainly ..."

I am satisfied that the initial report by the Society to the Central Registry dated September 8, 1975 together with the response to the Ministry's "communication" dated April 14, 1976, gave to the Ministry information which, if the documents had been read by a qualified social worker, should have raised concern within the Ministry. That concern should have been reflected in action by the Ministry directed specifically to Kim's case.

I am satisfied that during Kim's lifetime the Central Registry was not in any sense used by the Branch as a means of supervision or inspection of the children's aid societies.

Almost two years after Kim's death the Ministry did begin to use the Central Registry to that end. That was accomplished very simply. In May, 1978 the procedure within the Branch was changed, merely by its own administrative action, to require that every report to the Central Registry be copied and one copy be given to the Branch's Field Consultant responsible for the children's aid society operating in the geographical area where the child named in the report lives. It is the duty of the Field Consultant to examine the report and take all necessary and appropriate action, including requests for further reports or information. The Field Consultant would possess appropriate knowledge and skill to give to any such report the immediate and continued attention it deserved, including direct intervention by the Field Consultant if necessary.

That change of procedure came about almost six years after the Greenland Report of July 1972 had questioned the value of the Central Registry "for statistical purposes alone." The Greenland Report made several points about the Central Registry which have been reproduced earlier in this report. The fifth of those points is particularly significant in relation to my present remarks.

That change of procedure came about almost two years after Dr. Sohn became Co-ordinator of the Ministry's Child Abuse Program. He had reviewed the Central Registry and found in it information which he felt had to be drawn to the attention of the Director of Child Welfare. From reports he found in the Central Registry he recognized "dangerous" situations and he advised the Director of Child Welfare. It would seem that until Dr. Sohn drew these dangerous situations to the attention of the Director of Child

Welfare that official was not aware of the information reposing in the files of the Branch. No other qualified social worker in the Branch was shown to be aware of that information until Dr. Sohn advised the Director of Child Welfare.

There was no testimony to indicate that the Director of Child Welfare or Dr. Sohn or any other qualified social worker in the Branch was aware of Kim's case during her lifetime. They were not then even aware of the documents about her in the Central Registry.

The Ministry, the Branch and the Director all are responsible and merit severe criticism with reference to the operation of the Central Registry. The Greenland Report of 1972 raised some concern about it. It was not until some time after June 1, 1976 that any change in that operation came about. The exact date of the change was not stated in testimony, but it occurred after Dr. Sohn commenced his duties as Co-ordinator of the Ministry's Child Abuse Program. One of his duties in that position was to review the Central Registry.

Dr. Sohn testified that a committee from the children's aid societies and the Ministry was formed to conduct the review. He said the recommendations of that committee were reflected in Bill 114 which was introduced in the Legislative Assembly in 1978. That was about two years after Kim's death.

Even without any amendment of legislation or regulations the Ministry was able to change the operation of the Central Register to provide that all reports submitted to it would be submitted to qualified personnel. There was no testimony to indicate that that change occurred during Kim's lifetime. I am satisfied that if the Ministry had been so minded that change could have been effected during Kim's lifetime.

By the time Dr. Sohn had begun his review of the Central Registry it had been in existence for about ten years. Mr. Macdonald's description of it as being in limbo was most apt. One of the definitions of the word "limbo" is "condition of neglect or oblivion." The Registry was certainly neglected, forgotten and in oblivion for about ten years.

The Central Registry had an imposing name. The clerks who received and recorded the reports had an even more imposing title. An annual report of its "activities" was prepared and circulated. If Kim's case were numbered among its activities I would suggest that the title is misleading. That report indicated the statistical material of the Central Registry, such as the total number of complaints, the number of complaints from each children's aid society and the ages of children.

Dr. Sohn testified that the material in the Central Registry was useful in a variety of ways. He said some children's aid societies made use of it by inquiring, whenever there was any suspiciion of an incident of abuse, to learn if the child or family had been involved in any earlier incident. He said he had wished more of the societies made that use of the Central Registry.

There was no testimony to indicate that the Ministry encouraged the societies to make that use of the Central Registry. It was a situation of the sort that recurred so often during the testimony of witnesses employed by the Ministry. The societies were left to make the decision as to whether an incident or case should be reported to the Central Registry or whether any advice or assistance with it should be sought from the Ministry.

Even though the circumstances are tragic I am drawn to recognize the Ministry's position as the exact opposite to the familiar line used to dispose of an unsuccessful applicant "Don't call us - we'll call you." Here the Ministry was saying, in effect, "Call us - because we'll not call you."

The existence and operation of the Central Registry did not constitute any supervision or inspection of the societies by the Director, the Branch and the Ministry.

The Ministry and its personnel were content to let the Central Registry remain in limbo for over ten years. It had been devised originally as a means of "tracking" persons who might be abusers of children. At some time it was demonstrated that it was not effective for that purpose because such persons did not move about, from community to community or from hospital to hospital, as much as had once been believed. When that was demonstrated was not clear from the testimony, but, it any event, no change in the operation of the Central Registry occurred until some time after June 1, 1976.

On the basis of Mr. Macdonald's testimony I am satisfied that it was not until 1978 that the procedure of the Central Registry was changed by his instruction, as Director of Child Welfare, that each report to the Central Registry should be examined by the Ministry's Field Consultant responsible for the society to whose area the report related.

Testifying in September, 1978, after describing the Central Registry as a source of information for any inquiring society, he went on to say:

> "A. Under the new Bill [114] it will be a significant case monitoring process as well. I should add that we have in this year begun to screen the registry reports; failing that the concern over child abuse is such that we will use every possible method of gaining a handle on the situation so I instructed at some time earlier that all reports should be screened by the field consultant reponsible for the society. Now, I --
>
> Q. Is that at least partly because of the highly publicized cases; there have been more than one, and this Popen case being one?
>
> A. I would think so. Much of our activity is working on the problem and we're looking for any possible way of improving our system ability to control the problem and to reduce the incident........"

Even then Mr. Macdonald was stressing the "activity" of the Ministry while conceding that it received some impetus because of "highly publicized cases."

Kim's case was one of those. But the publicity came in December, 1977, about sixteen months after her death.

It is sad that it took "highly publicized cases" to give some impetus to the Ministry. In my view the impetus to the Ministry should come at least as much from within the Ministry as from outside it and it should not require the occurrence of "highly publicized cases."

There was no testimony to substantiate or suggest any reason why the directive to "screen" reports to the Central Registry could not or should not have been issued during or even before Kim's lifetime.

When that change came about, at least in part as a result of the Greenland Report in 1972 and Dr. Sohn's review after June 1, 1976, the Central Registry was recognized as being useful as one instrument to enable the Ministry to monitor the management of incidents of possible abuse.

Subject still to the serious proviso that, despite the contents of the Greenland Report, no clear direction was given by the Ministry as to what incidents were to be reported, the Central Registry was then available as a means of supervision and inspection of the societies.

Because of that proviso it was a flawed instrument for that purpose. Only cases or incidents reported by a society would be monitored and, to that extent, supervised. Cases or incidents not reported by a society would not be supervised or inspected unless, as a result of something occurring in relation to a reported incident, the Ministry examined other files at the society or, as a result of the case itself becoming "highly publicized," the Ministry belatedly became interested in it.

Kim's was an example of the latter type of case.

The likelihood of the Ministry becoming interested in a case not reported to it was rather remote. There was no testimony as to what might stir the Ministry to some action in such a case.

It would seem that it would have to be something shocking. Even in Kim's case, which was reported in September, 1975, it did not occur until March, 1977. At that time the Ministry was stirred ever so slightly about seven months after her death in August, 1976.

Until March, 1977 the Society had forwarded three documents to the Central Registry. They were the initial report dated September 8, 1975 and the response to the Ministry's "communication" dated April 14, 1976 and another report, upon the same form as the initial report, but dated September 27, 1976, signed by Mr. Lovatt and reporting Kim's death on August 11, 1976.

That report dated September 27, 1976 in appropriate spaces on the form mentioned:

> "Previous history of child abuse. Mr. Popen father pleaded guilty in court on Mar.29/76 (sic)."
>
> "Date Aug. 11/76"
>
> "Child died shortly after arriving at the hospital. Doctors again suspected possible battered child syndrome. The police have conducted a full investigation into the situation."
>
> "Application for wardship for the other child Karie, born July 1976 made August 18/76, adjourned to Sept. 20/76."
>
> "Parents have been charged with manslaughter."

A portion of Mr. Macdonald's examination by counsel to the Inquiry was transcribed as follows:

> "Q. So that Exhibit 112 includes a very brief report of her death. Yes, part of Exhibit 112 they reported September 27th, 1976, just indicates that 'the child died, shortly after arriving at the hospital. Doctors again suspected battered child syndrome. Parents have been charged with

manslaughter'. Now, that would have gone into your registry?

A. That was the registry report, yes.

Q. Even that didn't trigger any red lights or flags or anything?

A. Not at that time."

Even the death of Kim, shown by the earlier report and response to have been a ward of the Society when she died, and the laying of the charge of manslaughter against her parents were not enough to arouse any active interest of the Ministry.

I am unable to imagine any combination of information and events which could stir the interest of the Ministry if those reports from the Society could not attract attention from the Ministry. I cannot help but contrast the inactivity of the Ministry with reference to Kim and her case following the Society's reports to the Ministry with the great excited flurry of activity which followed the publication of reports of her case in and after December, 1977.

That flurry of excited activity confirms Mr. Macdonald's testimony, which I regard as a sad commentary upon the operations of the Ministry in relation to Kim. He thought that "highly publicized cases" had led to some changes in procedures in the Ministry.

Until it became a "highly publicized case," Kim's case aroused effectively no interest by the Ministry and when it was highly publicized there was great interest by the Ministry. There was a long-distance telephone call for an immediate oral report to be given to the Minister within hours. There was a request for a written report to confirm or elaborate upon the oral report. And then of course there was the continued interest of the Ministry as the case remained "highly publicized."

On the face of the documents there were discrepancies. The response of April, 1976 said that Kim was made a ward of the Society on February 25, 1976 and "Mr. Popen had pleaded guilty," the tense chosen suggesting, correctly, that the plea was entered before February 25, 1976. The report of September 27, 1976 said the plea was entered on March 29, 1976.

The report of September 27, 1976 said that the application for wardship of Karie was adjourned to September 20, 1976, a week prior to the report. The recordings in the files of the Society state that on September 20, 1976 Karie was made a ward of the Society for a period of six months.

It was not until March 25, 1977 that the Ministry sent a "memorandum" to Mr. Lovatt. In it the Branch "wondered" whether Mr. Lovatt could provide

> "a more detailed report concerning the child's [Kim's] decease."

and asked for advice

> "on the present status of Karie...and on the results of the charges laid against the parents..."

The slight stirring of the Ministry brought forth that very mild communication.

Despite two reports that would have led experienced social workers such as the Ministry's Field Consultants to make inquiries of the Society as early as September, 1975 and April, 1976 and a further report, in September, 1976, of the death of the child mentioned in the earlier reports, which should certainly have led qualified and experienced personnel to do something, the Ministry had done nothing.

After that slight stirring, the Ministry returned to its state of apparent lethargic interest in Kim's case. It was not until almost six months later that the Ministry sent a "memorandum" seeking more details of Kim's death, Karie's status and the charges against the parents. The memorandum did not suggest any sense of urgency. It merely expressed the wish for a reply "in due course." In the light of all that occurred later, that is a further illustration of the Ministry's lethargy.

Mr. Lovatt did not reply until May 13, 1977. That delay of about seven weeks, unquestioned by the Ministry, indicates the little importance both Mr. Lovatt and the Ministry placed upon the matter. His signature appears upon the letter. Most of the letter was taken up reciting the many adjournments of the criminal proceedings which were then scheduled to be heard on June 15 and 16, 1977. It mentioned the orders making Karie a ward of the Society for six months from September 20, 1976 and for a further eight months from April 4, 1977.

By the time that memorandum was written the initial period of the Society's wardship of Karie had been completed. The recordings in the Society's file state that on April 4, 1977 the Society was granted wardship of Karie for a period of eight months.

None of what was recorded in the Central Registry caused any stir by the Ministry. It is fair to infer that the memorandum from the Ministry dated March 25, 1977 was written because the Ministry received a letter from H.B. Cotnam, Chief Coroner for Ontario, dated March 17, 1977, addressed to Mr. Macdonald.

Dr. Cotnam wrote of Kim's "tragic death... as a result of 'child abuse.'" His letter concluded with the words "for your information and whatever action you deem necessary."

The Ministry wrote to Dr. Cotnam on March 25, 1977 to acknowledge his letter and to state that the Ministry had written to the Society for "a more detailed report."

It would seem that while Dr. Cotnam's letter caused the Ministry to write a memorandum the Ministry was not pressing the Society for information.

The Ministry had not provided supervision and inspection of the Society during Kim's life. Her death and the Ministry's knowledge of it, of some of the earlier incidents of abuse during her lifetime and of the charge of manslaughter against her parents made no change in that.

Mr. Macdonald, in another area of his testimony, said that the Ministry recognized that each society had a primary responsibility in its own geographic area. He said that the Ministry also recognized its responsibility to oversee the operations of each society. He said the Ministry perceived its role as providing advice, assistance and help to the societies. That would seem to be a correct perception.

I am satisfied that even prior to Kim's birth the Ministry was not fulfilling that role. It did not have a sufficient number of staff with qualifications to oversee the operations of the societies and to advise and assist them. That situation continued and was even more acute during Kim's lifetime.

Mr. Silvio Joseph Mainville testified to that effect. From September, 1970 until late January, 1976 he was a Child Welfare Consultant or Supervisor with the Ministry. From 1970 until 1973 he was one of three persons holding such office. In 1974 and 1975 he was one of only two such persons. In that position his superior was the Supervisor of Field Services of the Branch. From 1973 Mr. Charko held that latter office.

Mr. Mainville testified that

> "primarily [his] responsibility was to make [himself] available as a programme consultant to [societies] in Ontario."

His choice of words shows that he felt he was required to be available to societies at their request. That is hardly the position of one who is to supervise and inspect and advise.

Mr. Mainville was initially assigned responsibility for about fifteen societies, including the Society. Mr. Mainville was aware that in 1974 and earlier years "readers" employed by the Branch had visited the Society to conduct specific field studies to enable them to prepare statistical reports. The nature of the studies might vary from year to year. In addition the "readers'" studies were intended to ensure that "some" of the requirements of the Act and the Regulations thereunder were complied with by the Society. Mr. Mainville then met with Mr. Lovatt to review the "readers'" report. The visits of the "readers" to the Society were discontinued in 1974.

Even the method by which that discontinuance was achieved is worthy of comment. It seems to have been primarily a process of attrition. As the "readers" found or were given other employment in or out of the Ministry they were not replaced. There was no regularly planned procedure to achieve the discontinuance. The societies were not advised of any such intention by the Ministry. They were not advised that the surveys were going to be discontinued. The visits of the "readers" simply stopped without comment from the Ministry unless someone inquired as to when the "readers" would be visiting. This was another instance of the Ministry waiting for a society to approach the Ministry. It would seem that if a society did not inquire it was not advised.

Mr. Charko expressed the Ministry's position in 1974 and 1975 as the process of attrition neared its end and the surveys by the "readers" ceased. That occurred in the following exchange of questions to and responses by Mr. Charko:

> "Q. All right. Now, in the latter part of 1974 and '75 what plans had the Ontario Government made for the evaluation of local children's aid societies?
>
> A. There were no plans to evaluate. These duties to some degree as I mentioned were sort of given to the children's aid society to say maybe if we discontinue some of these surveys, you could introduce your own and some societies did introduce, some they didn't.
>
> Q. Well, were the plans being made by the government in '74 and '75 to allow the local societies to evaluate themselves?
>
> A. No, we didn't sort of officially send any memorandum to this fact to say that we are charging, we're asking the societies to assume that responsibility or to say that

we are terminating. This was sort of a gradual phase out.

Q. Well, yes, had the government any plans as to how to evaluate local children's aid societies in '74, '75?

A. The government, at that stage I would have to say no. What did happen at that time, the Ministry was planning to decentralize and after the decentralization if decentralization went into effect then we'll decide if the survey or evaluation would be done from the central office from Toronto or from each individual area.

Q. Well, as a matter of fact even today [1978] has the Ministry any plan or any procedure for the evaluation of children's aid societies?

A. Not formal."

One process of contact with the societies, however ineffectual it may have been, was allowed to wither and disappear without plan and without replacement and without notice to the societies. It was all part of some proposed reorganization of the Ministry.

Mr. Mainville testified that in the latter part of 1974 and in 1975, because of financial constraints and the reorganization of the Ministry, the number of Child Welfare Supervisors was reduced from three to two. He did not visit the Society in that period.

The significance of that number of Child Welfare Supervisors, whether it be three or two, is apparent when it is compared with the number who were in such positions until about 1969. That number had begun at eight, but gradually dwindled to two. The number of societies remained constant.

Unless the Ministry was overstaffed prior to 1969, and there was no such suggestion, one can only wonder how two persons could do what had required eight persons in earlier years.

I am satisfied that the two Child Welfare Supervisors could not and did not provide a reasonable and adequate level of supervision, inspection and advice to all of the societies during all of Kim's life. The Society was one society which did not receive an adequate level of such service from the Ministry during Kim's life.

I say that in full awareness that the "readers" did some non-professional visiting and gathering of information until 1974. By the time Kim was born even their services to the Society had been withdrawn.

The result was that in 1975, the first year of Kim's life, there was not even a visit to the Society by the "readers" and there was no visit to the Society by Mr. Mainville, the Ministry's Child Welfare Supervisor responsible for the performance of the Ministry's responsibilities in respect of the Society. Mr. Mainville may have been "available" to the Society, but, in my view, the Ministry in 1975 failed to provide any supervision or inspection of the Society.

I accept as an accurate assessment of the Ministry's capabilities in late 1974 and in 1975 Mr. Mainville's testimony that

> "...there were only two Child Welfare Supervisors for the whole Province of Ontario in 1974 and '75 so certainly the Ministry was in no position to adequately monitor children's aid societies nor do I wish to suggest that what existed prior to that was completely adequate in terms of monitoring the work of the children's aid societies..."

He expressed the same view in respect of his own ability to supervise and inspect the societies for which he was responsible. They included the Society. That expression of opinion occurred in the following exchange of questions and answers.

> "Q. And it would have just, from your standpoint in the latter part of '74 and '75 been almost impossible for you to have surveyed 15 agencies yourself?

> A. It would be impossible, sir.
>
> Q. Were there any instructions given to yourself as a Field Supervisor not to visit agencies?
>
> A. No, sir, there were no such instructions. Because of the shortage of staff necessarily we could not provide the same amount of consultation to the Societies that we were providing earlier but we were simply told to make ourselves available on request in special situations where there were some serious problems where certainly we would be expected to deal with these concerns."

Mr. Mainville testified that he, the Ministry's Child Welfare Supervisor supposedly overseeing the operation of the Society until January, 1976, was unaware of Kim's case in 1975 and 1976. That, together with the testimony of the witnesses employed by the Society as to the gravity of Kim's case and that such a case was a rarity within the Society, demonstrates the utter lack of supervision and inspection of the Society and its files and records by the Ministry in 1975. It was no different in 1976 the second and last year of Kim's life.

Mr. Mainville resigned from the Ministry in January, 1976. He did not visit the Society in 1976. Mr. Charko, still retaining his position as Supervisor of Field Services, assumed direct responsibility for the supervision of the Society after Mr. Mainville's resignation.

Mr. Charko testified that until 1974 the Child Welfare Supervisors in the Ministry

> "were more involved directly with the, identifying weaknesses in [societies]."

He too said that from 1974 that involvement was reduced because of the Ministry's re-organization. He said that the desire of the societies for greater autonomy was a factor in that reduction.

There was no testimony to suggest that the Society at any time expressed any desire that the "readers" not visit or any concern as to encroachment upon its autonomy.

In my view Mr. Charko confirmed Mr. Mainville's testimony as to the insufficient number of personnel within the Ministry to enable it to fulfill its obligations in respect of the Society. He said he had not instructed Mr. Mainville not to visit the Society in 1974 or 1975, but

> "there was sort of a limited time because of the number of staff that we [the Branch] had."

That satisfies me that the changes within the Ministry resulted in its not having sufficient personnel to do what it had been doing in early 1974 and prior years. I am not saying that what the Ministry did in those earlier years constituted a satisfactory performance of its statutory obligations. In my view it did not. *A fortiori* what occurred in late 1974 and during all of Kim's life was not a satisfactory fulfillment of the Ministry's statutory duties to supervise and inspect the Society.

Mr. Charko gave some forthright responses when asked to express his personal opinion upon the involvement of the Ministry with the societies.

One such response is contained in the following extract from the transcript of his testimony upon the Inquiry:

> "Q. Well, Mr. Charko, do you think therefore, that the Ministry should become more involved at the agency level once again as they were prior to 1974?
>
> A. My feeling yes and as I say I speak out quite strongly and openly in many Societies and I think I say this openly in the government and I've been on both sides in a sense, because I've spent about just as many years in a children's aid system on a different level as a worker, as a night duty worker, as a supervisor, as a local director, as I spent with the government. I have to say that the government has to

provide more supervision, that would be my sort of a feeling.

Q. Well, is it your feeling now or was it your feeling in '74, '75, '76 and '77, that they should be applying more supervision?

A. My personal feeling was that we should be more involved with children's aid.

Q. Then you were during those years?

A. That's right."

Another equally forthright response related to the Society and is recorded in the transcript of his testimony as follows:

"Q. .....I'm asking you whether or not you do agree with Mr. Zwerver's observations that there were some major areas of concern in this Agency?

A. I think the areas of concern there were, yes.

Q. All right.

A. I agree with that part.

Q. All right, fine. Now, is there any way as far as you're concerned that the Ministry ought to have known about the fact that there were these deficiencies in this Agency here in Lambton County?

A. If for example, if I or Sil Mainville who supervised previously or Paul Siemens, we came here more frequently and if I met with the staff more frequently, with the supervisors, probably a lot of these things would have come to the surface.

Q. All right.

A. Or even field workers, when we had field workers at times after they spent one week in children's aid society, in one week they can observe quite a few things, so

> beside the survey at times I would get kind of feeling, there is some problem or some area of concern, then we would get into the Society and discuss these areas asking for improvement.
>
> Q. All right. Now, I know you can't be absolute about this, but do you feel that if Mr. Mainville after or someone else besides him, had continued to be able to visit the Agency on a regular basis as they had done in the past that they would have picked up a lot of these things, a lot of these areas of concern.
>
> A. Correct, this would have been picked up."

That was an acknowledgement by a responsible official of the Ministry as to the inadequacy of the Ministry's performance of its duty under section 2 of the Act at least or particularly during the months of Kim's life. That acknowledgement reassures me in my opinion.

I am satisfied that during Kim's life Mr. Mainville and Mr. Charko were available to advise the Society if the Society requested advice. To that limited extent the Ministry performed a part of its obligation to advise the Society. But the provision of advice only when requested is not the full extent of the obligation which the statute places upon the Ministry.

In my view a correct interpretation of Section 2 of the Act requires the Ministry to provide advice when it is needed or appropriate even if the Society has not asked for it.

Mr. Charko's testimony that the desire of societies to have greater autonomy was a factor in the reduction of the involvement of the Child Welfare Supervisors with the societies seems to be an extension of the approach by the Ministry to its statutory duties. That testimony by Mr. Charko conjured up, for me at least, a vision of him as the person responsible for the operation of an institution withdrawing supervision of the persons confined therein because they wanted greater autonomy. In such a vision the abandonment or dereliction of responsibility or duty would be no greater than the Ministry's withdrawal of supervision and inspection of societies because the societies or some of them wanted greater autonomy.

Throughout the testimony relevant to the relationship between the Ministry and the societies it was apparent to me that the Ministry, in whatever it did purportedly to oversee the societies, confined itself for the most part to contact with the local directors of the societies. The Society was no exception.

For the most part Mr. Mainville's contacts were with Mr. Lovatt. So were Mr. Charko's. They relied on Mr. Lovatt to relay to the Board of Directors of the Society any information or advice they gave to him. It would seem that that was so even in situations where criticism of the Society or its personnel or its operations were concerned.

On occasion Mr. Mainville and Mr. Charko did meet with the Board of Directors of the Society. I did not sense that in any way were such meetings intended to be supervisory or inspectorial in nature or to be a vehicle whereby Mr. Mainville or Mr. Charko would review with the Board of Directors all that had been discussed with Mr. Lovatt.

While Mr. Charko had prepared an assessment of Mr. Lovatt's performance of his new responsibilities before he was confirmed in the position of Local Director of the Society, that assessment was retained by the Ministry. It was not made available to the Board of Directors of the Society. The Society was not apprised of anything more about the assessment beyond notification that Mr. Lovatt possessed educational qualifications which, together with his experience in social work, were, in the opinion of the Minister, suitable for the position.

In my opinion this was another instance in which the Ministry should have advised the Society. The position of local director is an important and responsible position. It involves many areas of social work and of administration. In my opinion the Ministry was remiss in not advising the Society of the particulars of Mr. Charko's report, including comments, if any, upon any areas of weakness in Mr. Lovatt's qualifications.

Apart from that initial assessment of Mr. Lovatt the Ministry did not assess the Society or its personnel. The Ministry made no effort to assess Mr. Lovatt's performance of his duties after he was confirmed as Local Director of the Society. Nor did the Ministry take any steps to ensure that the Society had any mechanism to assess the capabilities and performance of Mr. Lovatt and the persons, such as Mrs. Harvey, who were in supervisory capacities.

That was a continuation of what I perceive to be the failure of the Ministry to advise the Society when it was considering Mr. Lovatt's appointment as Local Director of the Society.

The Society had no mechanism to assess Mr. Lovatt and supervisory employees, but it did have a procedure to assess the subordinate employees.

Employees of the Ministry indicated that had any society requested the Ministry to assess any senior employee that request would have been granted. None of them could remember any such request having been made by any society. It would seem that too was just another area in which the Ministry was available, but was not called upon.

As much as anything, the lack of any such requests demonstrates the futility of the Ministry's stance of supervising and advising by being available.

In my view merely being available to furnish advice if and when asked does not adequately fulfill the Ministry's duty to advise. Certainly it does not in any way constitute supervision and inspection.

Mr. Charko seemed to rely upon the provisions of the Act as a justification for the practice of the personnel of the Ministry to confine most of its communication or contact with a society to communication or contact with the local director to the exclusion of the board of directors of that society. That applied to the Society.

If I correctly understood his testimony, a portion of which is reproduced earlier in this Chapter, he had hoped the Ministry could have had more direct contact with the boards of directors of the societies, but he felt that was prevented by the terminology of the Act. He said the Act makes the local directors responsible to the Director appointed under the Act. I am at a loss to understand how that imposition of a responsibility upon the local director can in any way inhibit the Ministry from communicating directly with the boards of directors of the societies. In my view Mr. Charko is in error in his understanding.

I gather that the Ministry's personnel felt they could not advise the board of directors of a society against appointing as the local director of the society someone who was favoured by the board of directors but who, in the opinion of Ministry's personnel, was not qualified.

To my mind, if that had occurred in fact, such a withholding of advice or comment would be a gross dereliction of duty by the Ministry.

That was not the Ministry's position with reference to Mr. Lovatt's appointment by the Society. The Minister specifically approved of his appointment, but without advice as to the basis for such approval.

In my view that approval would have been more meaningful if it had been accompanied by Mr. Charko's assessment of Mr. Lovatt and his performance of duties together with any other material upon which the Minister based his decision to approve the appointment.

There was no testimony as to the contents of Mr. Charko's report upon Mr. Lovatt and his performance. Since Mr. Lovatt is only human I assume that Mr. Charko could not have found him to be perfect in every respect. The testimony upon the Inquiry supports that assumption.

The Ministry's approval of Mr. Lovatt's appointment might have been more helpful to the Society and to Mr. Lovatt had it suggested to the Board of Directors of the Society that Mr. Lovatt did have some imperfections or weaknesses. With that type of comment from the Ministry the Board of Directors would have been in a position to try to reinforce any area of weakness so as to prevent problems in the future.

Without that comment the Board of Directors were not aware of any areas of Mr. Lovatt's performance which might require any attention from the Board. I am satisfied that the Board of Directors, primarily composed of persons without any formal training or experience in social work or child welfare, was itself unable to assess the performance of Mr. Lovatt or any other member of its staff. The Board of Directors could look to Mr. Lovatt for appropriate assessment of his subordinates, but would have to look elsewhere for any assessment of Mr. Lovatt.

Another portion of Mr. Charko's testimony touched upon what he perceived to be difficulties encountered by the boards of directors of societies as they try to make decisions. He said, in part:

> "...In my opinion the board should be more aware what's going on. I have a feeling at times that board doesn't know everything, because the board makes the decision on the basis of information that is presented to the Board and it doesn't have to be misleading information, it's simply not complete information, that means the board is making decision on only fifty percent of proper information that it receives. The board doesn't have capability of analyzing certain facts, right."

It would seem to me that that might apply to the Board's consideration of and decision upon Mr. Lovatt's appointment as Local Director of the Society. The Board had some information, but I must doubt that it had full information.

In the light of Mr. Charko's acknowledgement that complete information is not always provided to the boards of directors of societies, it is all the more disturbing that the Ministry, in its dealings with the Society, as with other societies, confined its contact to communication with

Mr. Lovatt, the Local Director, and relied on him to relay the appropriate information to the Board.

To my mind that practice assumed an unduly high standard of expectation. It would seem to be unreasonable to expect a local director of a society to report to the board of directors of the society that the Child Welfare Supervisor of the Ministry had expressed harsh criticism of the local director's ability or performance. That would be particularly so if the local director had any doubts and uncertainties as to the security of his or her employment.

In my view it would have been reasonable for the Board of Directors to depend upon the Ministry for assessment of or comment upon Mr. Lovatt and his performance. In the absence of any testimony to the contrary, apart from consideration and rejection in 1975 and 1976 of Mrs. Woods' proposal for an independent evaluation of the Society, it would seem that the Board of Directors relied upon the Ministry for such an assessment.

Mrs. Woods herself testified that she too felt it was something the Ministry should have done. Thus even her proposal was not to be regarded as an acknowledgement to the contrary.

In my opinion even if the contact between personnel of the Ministry and Mr. Lovatt were to be regarded in some way as being fulfilment of the Ministry's duty to advise, supervise and inspect the Society and its operation and records, there was an acknowledged absence of such advice to and supervision and inspection of the Board of Directors and its operations and records. The Board of Directors is an integral part of the Society and the Ministry cannot avoid its duty to and in respect of the Board of Directors.

In summary, in my view the Director appointed under the Act did not, during Kim's lifetime, fulfill the duties imposed upon him by the Act to advise, supervise and inspect the Society and its operation and records. The Ministry was responsible for the Director's failure.

PART III

Financial Affairs

Mr. Macdonald testified that the primary role of the Ministry was to provide funds to the societies.

From the view of the societies the Ministry is their primary source of funds. For all practical purposes the Ministry provides about eighty per cent. of the monies expended by the societies to provide for their care of and service to children and their families. In addition the Ministry provides grants towards the costs of erecting or acquiring buildings to be occupied in whole or in part by the societies. Such capital grants may be paid to the societies or to the municipalities in which they carry on their operation.

Substantially all of the balance of the monies required by the societies are provided by the municipalities, having been raised by municipal taxation.

In addition to such public funds the societies may receive funds from private sources. Subject only to the terms imposed by the donors thereof, such private funds may be used by the societies as they decide without reference to the annual budget procedures which determine the amounts of funds to be provided through the Ministry and the municipalities.

The Act and the Regulations made thereunder prescribe the procedure required to establish the operating budgets of the societies for each year. It is a lengthy procedure which usually begins in the later part of the year preceding that to which it relates. The procedure is not usually completed until several months of the current year have elapsed.

It was that procedure, together with matters related to or arising from it and its results, which Mr. Lovatt said involved so much of his time and effort and caused so many difficulties particularly during the years in which Kim lived.

Essentially the budget procedure begins when each society prepares, perhaps in November of each year, a preliminary estimate of its expenditures for the coming year. That document is submitted to the Ministry for comment. Early in the current year the Society then prepares a proposed budget setting forth its estimated expenditures for the current year and submits it to the municipal councils of the municipalities it serves. Assuming that the municipal councils approve the proposed budget the society submits it to the Ministry for approval by the Minister. The Minister may approve the proposed budget, in which case it becomes the budget.

In the alternative the Minister may propose some alterations of the budget. If so the Ministry advises the society and the appropriate municipal councils of the alterations proposed by the Ministry. If the proposed alterations are acceptable to the society and the municipal councils the Minister then approves the budget, amended as proposed by the Minister, and that document then becomes the society's budget for the year.

If the changes proposed by the Minister are not acceptable to the society or the municipal councils or any of them, they or one of them may request the Minister to refer the matter to a child welfare review committee. The child welfare review committee receives testimony and submissions from all concerned and reports its findings and recommendations to the Minister. The Minister then reviews the matter and the Minister's decision thereafter as to the budget estimate to be approved is final.

The testimony upon the Inquiry was all to the effect that the availability of funds within the Society had no direct bearing upon any aspect of the Society's management of Kim's case. That may very well be so, but the adjective "direct" seems to me to be important.

Throughout the testimony of persons connected with the Society I sensed a pervasive concern with financial matters. Mr. Lovatt was the prime example. Mr. Higgins spoke of the role of a member of the Board of Directors as being "a watch dog for all the citizens of the community to see that the money was being wisely spent." Others spoke of the interest which members of the municipal councils appointed to the Board of Directors had in expenditures. Mrs. Woods spoke of restraints on expenditures as a factor in the decision not to seek an independent assessment of the Society. Mr. Zwerver said vital office supplies were not available because Mr. Lovatt said funds were not available for that purpose in March, 1978, the third month of a new financial year.

Some of Mr. Zwerver's testimony was the most telling in this area. He said almost everyone in the Society expressed an unusual amount of interest in financial matters. He said it was obvious to him that that concern affected many decisions.

Given that concern of the personnel of the Society I am led to share Mr. Zwerver's view that some decisions were affected by financial considerations. I have no reason to believe Kim's case was not one in which, however indirectly or subliminally, financial considerations played a part.

Mr. Macdonald testified that 1975 was the last year in respect of which financial constraints were not applied by the Ministry to the budget proposals of the societies.

He said that the Society's budget proposal for the year 1975 was submitted and approved in the amount of $567,067.00 with a further provision of $31,249.00 to defray the deficit incurred in 1974.

Mr. Macdonald testified that that proposal had been subjected only to minimal guidelines and had been approved with only minor modification. Nevertheless, the Minister's approval was not granted until July 24, 1975. Almost seven months of the year to which it applied had elapsed.

It would seem to me that seven or more months of uncertainty as to whether sufficient funds would be available to the Society could only heighten and not abate any undue interest that the staff of the Society had in the financial matters of the Society.

The programme of constraints applicable to the budget proposals for the year 1976 was announced in December, 1975. The Ministry's announced intention was to restrict any increase in the budget of any society for the year 1976 to an amount equal to 5.5% of the amount of that society's approved budget for 1975.

The Society's budget proposal for 1976 was submitted in the amount of $661,000.00, which Mr. Macdonald said represented an increase of about 16% over the approved 1975 budget as opposed to the Ministry's restraint at 5.5%. The Minister approved the submission at the reduced figure of $638,835.00, which Mr. Macdonald said represented an increase of about 12% over the approved 1975 budget or about 3.2% over the Society's actual expenditures in 1975. In addition the Ministry provided for the payment of the deficit of $50,787.00 incurred by the Society in 1975.

The Minister's approval of the Society's budget for 1976 was signed on June 14, 1976. Almost six months of the year had elapsed. By letter dated May 7, 1976 the Minister had written to the Society announcing his intention to grant that approval. That letter appears to have been written in compliance with the Act so as to enable the Society and the municipalities, if they wished, to request the Minister to appoint a child welfare review committee. No such request was made. The Minister's letter stated that the approval represented an increase of 5.5% over the Society's actual expenditure in some categories of the budget in 1975 and an increase of 5.5% over the Society's approved estimated expenditures in other categories of the budget in 1975.

In fairness to the Society, that approval of an amount in excess of the limits proposed by the constraint programme of the Provincial Government and Ministry, must be viewed in the light of the position adopted by the Ministry and the Minister in December, 1975 and maintained by them for some months thereafter.

Under the original position taken by the Minister and the strict application of the limitation of the increase in the Society's budget, the Society, according to Mr. Macdonald's calculations, would have been expected to limit its 1976 budget to about $598,000.00.

The Society's actual expenditures in 1975 had been $617,854.00. So the strict application of the constraints would have required the Society to reduce its expenditures in 1976 to a figure about $20,000.00 less than it had actually spent in 1975.

The absolute lack of realism in that approach is apparent. The Ministry was acknowledging that a limitation of 5.5% represented a constraint. It was ludicrous to apply that limitation as a percentage of a budget which had been exceeded by a greater amount in the prior year.

The Ministry now, in my view, only can choose one of two explanations for the position that existed for it and the Society at the end of 1975 and the beginning of 1976. Neither is complimentary to the Ministry or to the Society.

The first explanation would be that in respect of the Society's operations in 1975 and prior years the budget procedure was a meaningless charade.

The audited financial statements of the Society for the years 1973 to 1977 inclusive were produced as an exhibit upon the Inquiry. I have prepared the following table on the basis of those statements for the years 1973, 1974 and 1975.

Year	Approved* Expenditure	Actual Expenditures	Deficit	Deficit as a percentage of approved expenditures (approximate)
	$	$	$	%
** 1973	419,544	441,499	31,564	7.5
1974	475,257	506,506	31,249	6.5
1975	567,067	617,854	50,787	9

* These figures apparently do not include the amount of any deficit in the prior year.

** In 1973 the actual payments by the Ministry and Municipalities were in the amount of $409,935.00, which is $9,609.00 less than indicated in the budget. That $9,609.00 apparently is part of the figure of the deficit for that year in the amount of $31,564.00.

For three successive years the Society had substantially underestimated its expenditures and had incurred quite substantial deficits.

There was no testimony to indicate that the Ministry took any steps to inquire into or to correct whatever miscalculations led to those deficits. It would seem that the Ministry, at least in respect of the deficits incurred in 1973 and 1974, merely gave retroactive approval to amendment of the earlier approved budgets to accommodate the deficits. As a result of such retroactive approval the Ministry paid its proportionate share of the deficits and the municipalities were required to pay the balance.

The alternative explanation is that the Ministry's supervision and inspection of the Society and its operations was inadequate. Either the Society maintained improper records to support its budget calculations or it was not exercising appropriate control of its expenditures or it did not correctly understand or interpret its own records or did not correctly identify and assess whatever trends or developments might have been revealed by those records.

There was no testimony that the Ministry took any steps to remove the cause of the deficits, that is, to improve the recording procedures of the Society if the deficits were rooted in faulty records or to improve the financial procedures within the Society if the deficits were rooted in any faulty financial procedures or to improve the ability of the Society to identify and assess trends or developments within the Society if the deficits were rooted in any deficiency in that area.

The position adopted by the Ministry and Minister in December, 1975 and maintained for some time thereafter in respect of the Society is shown to be all the more ludicrous because it included a statement that deficits incurred by societies in 1975 would not necessarily be retroactively approved by the Minister.

The initial position of the Ministry and Minister vis a vis the Society in early 1976 can be shown in tabular form as follows:

Year	1975	1976
	$	$
Approved budget	$567,067	$598,255
Deficit on operations	$ 50,787	Deduct $ 50,787 to pay 1975 deficit
Amount expended/ available in year for current expenditures	$617,854	$549,042

The Society's approved budget for 1974 was about 7.6% above its actual expenses in 1973. Its 1975 approved budget was about 12% above its actual expenses in 1974. There was certainly a feeling, well-founded, that apart from any reduction of demand for the Society's services, its expenses in 1976 would be greater than in 1975. The Provincial Government and the Ministry recognized the upward trend of costs. The Society was justified in feeling that approval of its budget for 1976 would recognize that trend.

Instead the Ministry and Minister very deliberately and determinedly took a firm position. The Minister would approve a budget proposal of no more than $598,255.00 and the 1975 deficit would be the subject of separate negotiation.

Mr. Lovatt, in his testimony, said that he had been told by staff of the Ministry that the deficit for 1975 might not be approved. If it were not approved the Society might have been in the position of reducing its expenditures in respect of 1976 matters or obtaining funds from sources other than the Ministry.

In addition the Minister, in a letter to the then President of the Society dated February 9, 1976, had written that he was prepared to approve the Society's estimates for 1976 in the amount of $598,256.00. That represented strict application of the 5.5% limit or restraint. That letter contained no reference to the deficit incurred by the Society in 1975, but did contain the following paragraph:

> "We remind you that there will be no funding available to accommodate potential 1976 deficits and Societies must control their expenditures to ensure a balanced budget at the end of the year. We should also note that municipalities are free to provide special grants to the Children's Aid Societies to supplement regular provincial and municipal funding, and Societies are free to seek funding from other sources."

Such a letter could not have given much comfort to the Society which had submitted a preliminary estimate in the amount of $661,000.00 and had incurred substantial deficits in at least the three preceding years.

All of the statements from the Ministry were pious and high sounding. It was the Ministry's stated hope that notwithstanding the constraints the societies would be able to operate with the same effectiveness in all essential areas and that "children would not suffer as a result of the financial constraints." That last clause appeared in a memorandum from the Minister to the Society which is dated March 12, 1976.

The fatuity of the Ministry's statements in December, 1975 and for some months thereafter was demonstrated by the testimony of Mr. Macdonald and Mr. Charko. From time to time each of them in his testimony spoke of the difficulties encountered by the Child Welfare Branch of the Ministry because of the constraints. The Branch was unable to hire persons to replace some who left the Branch. The Branch was unable to complete its proposed return to the use of Child Welfare Supervisors to visit the societies when the Branch, without any considered or announced decision to do so, effectively withdrew the service of the "readers" by permitting that service to wither away to nothing. There was a void in the Branch.

Therefore I am satisfied that, within the Branch a service to the societies which had withered to nothing by 1974 and 1975, when the Ministry was intending to revert to what had previously existed, was not replaced in 1976 and a void existed until March, 1977 when the Branch was able to begin a programme of hiring Child Welfare Supervisors.

That void existed throughout virtually all of Kim's life and certainly during the crucial year of 1976 when decisions were made which allowed Kim to be in a place of danger and ultimately to die as a victim of child abuse.

In that one area, the Branch had provided in prior years a service of a form of supervision and consultation delivered by Child Welfare Supervisors who were qualified and experienced. They were few and their task was, in Mr. Mainville's word, "impossible" given the number of societies assigned to each Child Welfare Supervisor. But it was a service. Some of that service was withdrawn to be replaced by visits and surveys by "readers" who were not qualified social workers and thus were not qualified to supervise, inspect and advise the societies. Even that inadequate service too was withdrawn in 1974 and 1975. It was not replaced because the Branch was unable to employ the people necessary to deliver the service it intended to provide.

In the light of the Ministry's position it seems to me that again the Ministry has its choice of two unflattering explanations. Firstly the service it was delivering to the societies prior to 1975, either by Child Welfare Supervisors or by "readers," was unnecessary and thus, in the interests of economy, could and should be terminated.

If the Ministry chooses that explanation it acknowledges that for years it provided an unnecessary service to the societies. It would further acknowledge that it had planned to re-institute an unnecessary service after 1974 and 1975 by returning to the earlier programme of Child Welfare Supervisors.

The second choice is no more flattering to the Ministry. It would be, as the testimony of Mr. Macdonald and Mr. Charko upon the Inquiry put it, that the Branch was being reorganized and in that process the complement of "readers" was eroded by attrition while the Branch intended to restore the prior service of Child Welfare Supervisors. It would continue that, despite the Branch's intentions, it was unable to do as it intended because controls imposed on or by the Ministry prevented the Branch from hiring the necessary persons to enable it to fulfill its intentions.

If the Ministry chooses that explanation it acknowledges that its financial constraints prevented it from continuing a service which it felt was necessary to the societies. Bearing in mind the overall duty upon the Ministry and the societies to protect and serve children, it would seem that, if a necessary service to the societies is not provided by the Ministry, neither the Ministry nor the societies could, as readily as they could earlier have done, ensure that "children would not suffer as a result of the financial constraints." Those latter words are part of one utterance by the Minister set forth in his form letter to the presidents and local directors of the societies, including the Society, dated March 12, 1976.

In my view of the evidence upon the Inquiry the second explanation is more probably the true explanation at least in respect of 1976. The service of Child Welfare Supervisors was a form of the supervision, inspection and advice which the Ministry was bound to deliver to the societies. Even it was not a satisfactory performance of that duty, but it was withdrawn and replaced by "readers" whose services even less satisfactorily fulfilled the duty imposed upon the Ministry if indeed those services were any fulfilment of that duty. When the Ministry decided to revert to the earlier system the "readers" were withdrawn by attrition and were not replaced. There was a void. It was that void which demonstrated as much as anything that the Ministry did not fulfill its duty to supervise and inspect the societies. That void resulted from the Ministry's financial constraints.

In the preceding paragraph I tended to limit the opinion therein stated so as to apply it to the year 1976. According to Mr. Macdonald 1975 was not a year in which restraints were applied to the societies' budget proposals. That may have been so for the Ministry too. If so, the imposition or presence of restraints did not contribute to the creation or maintenance of such a void in 1975. Thus in 1975, without restraint, the void came about because the Ministry simply did not implement its own intention to return to the prior organization whereby Child Welfare Supervisors delivered the Ministry's services to the societies.

In my view the impossibility of the task placed by the Ministry upon the Society in December, 1975 was thus demonstrated by the Ministry's inability to provide an essential service to children, a service which, by statute, the Ministry was required to provide. The Ministry's employees attributed that inability to financial restraints.

One can only ask, why then would the Ministry expect the Society to be able to maintain in 1976 standards of essential service equal to those in

1975, but at the same time spend less money than in 1975.

The letter of Mr. Taylor, the then Minister, to Mr. Henderson, a Member of the Legislative Assembly representing the area of the County of Lambton and a member of the Provincial Government, in February, 1976, is a further demonstration of the fatuity of statements from the Minister and the Ministry about that time.

In January, 1976 officials of the Society met with Mr. Henderson. On behalf of the Society they expressed concern about the impact upon the Society and its operations if the Ministry's restraints upon expenditures were literally and strictly enforced. They advised Mr. Henderson of some local conditions which, they felt, should lead to some relaxation of the controls in their application to the Society for its 1976 estimates.

Specifically they pointed out that the number of children in care had risen from 129 in 1974 to 143 in December, 1975. I presume Kim was one of the children represented by the increased figure. That increase, arthmetically, was about 11 per cent.

They repeated some of the concerns expressed by Mr. Lovatt in his letter to the Ministry dated December 13, 1974 which ultimately, with a subsequent and supporting brief, led to the Ministry's approval of the employment of two additional workers in December, 1975. The employment of those two would, of itself, represent a substantial increase in the Society's expenditures in 1976. On the basis of Mr. Lovatt's testimony I estimate the amount of that increase to be about $25,000.00 per annum for salaries and fringe benefits, which is about 4.4% of the approved budget expenditures of the Society for 1975. That one item would represent about eighty per cent. of the Ministry's proposed 5.5% restraint.

If the Ministry were to adhere strictly to its stated position of approving the Society's estimated expenditures for 1976 in an amount equal to 5.5% above the 1975 estimated expenditures of $567,067.00, the increase from 1975 to 1976 would have been about $32,000.00. If $25,000.00 were needed to provide for the two additional employees whose hiring was approved by the Ministry in 1975, there would be about $7,000.00 left to meet all other anticipated increases in costs.

In 1974 the Society had 23 employees. Even if the entire $7,000.00 were allocated to provide increased salaries for them each, on average, would receive an increase of about $300.00 per annum. That was totally unrealistic in the light of the then rate of inflation which Mr. Lovatt testified was about 10% per annum. In 1975 the Society's total expenditure on salaries and staff benefits had been about $311,000.00. If that were increased by $7,000.00 it would represent an increase of about 2.2%. That is equally unrealistic.

The Society reminded Mr. Henderson of the influx of workers engaged in construction of new industrial facilities. They anticipated a much heavier demand for the Society's services because of that influx.

Mr. Henderson then wrote to Mr. Taylor under date of January 30, 1976. His letter set forth all of the above as well as some other comment. He asked if any additional consideration could be given to the Society's difficulties.

Mr. Taylor replied to Mr. Henderson by letter dated February 17, 1976. It was harsh, blunt, adamant and, as Mr. Taylor wrote, unequivocal in its refusal of any further consideration of the concerns raised by the Society.

It is a short letter; so I reproduce the body of it in its entirety here rather than in the schedules to the Report. It was as follows:

> "Thank you for your letter regarding the Lambton County Children's Aid Society and I sincerely regret that the answer is unequivocally 'No.'
>
> The 5.5% increase is not negotiable and I think Darcy will confirm this to you. A letter has gone out to the Sarnia Children's Aid Society explaining the 1976 approved estimates and I am enclosing a copy for you.

> I do realize that these constraints on spending have aroused a good deal of concern and certainly the Societies will have to make a thorough examination of all their services and activities. However, I feel sure that essential services will be maintained."

That was certainly not in keeping with Mr. Taylor's statement to the meeting of presidents and local directors of the societies convened by the Ministry on December 18, 1975. At that time Mr. Taylor had said,

> "It is expected that in curtailing the growth of expenditures that you will make selective cuts in order to preserve the present level of service supplied. Rather than spell out specific detailed instructions for budget cuts I feel that we, together must make that decision taking into account local variance and needs."

Mr. Taylor's letter was a curt refusal to "[take] into account local variance and needs." Using the trite fad terminology of the time he said "the 5.5% increase is not negotiable."

Mr. Henderson forwarded a copy of that letter to the Society along with a copy of Mr. Taylor's letter of February 9, 1976 to the President of the Society. He said both letters were self-explanatory. I share that view. There was no room for misunderstanding of Mr. Taylor's position.

Mr. Lovatt's testimony puts the Ministry's original stance in its appropriate place in relation to the facts of the Society's position in December 1975 and early 1976. In 1975 its expenditures had been $617,854.40, which was $50,787.40 in excess of its approved estimates. The Ministry was unequivocally stating that, regardless of local conditions claimed by the Society, only $598,256.00 would be approved for expenditure in 1976 and, perhaps, the Society would have to pay the 1975 deficit of $50,787.40 without the Ministry's assistance which might ordinarily have amounted to about $40,000.00 and without the statutorily assured payment of the balance by the City of Sarnia and the County of Lambton.

The best the Society could expect was approval of expenditure of $598,256.00 which would be $19,598.00 less than its actual expenditures in 1975 and the Ministry and municipalities would assist as usual in retirement of the 1975 deficit.

The worst the Society could expect would be approval of $598,256.00 out of which it would have to pay its 1975 deficit of $50,787.40 leaving, $547,469.60 for expenditure on 1976 matters. That would mean the Society would have available for 1976 matters $70,385.00 less than it actually spent in 1975 and $113,531.00 less than it estimated it would need in 1976, namely $661,000.00.

Mr. Lovatt was asked where reductions of that magnitude might be made in the Society's estimated expenditures. He said it could not be achieved by reduction of the allowance for salaries, which was about $300,000.00. He said it could not be achieved by reduction of Boarding Home Fees, which were about $159,000.00 in 1975, without reducing the number of children in care. He said it could not be achieved by reduction in Building Occupancy costs which, even in 1978, were estimated by him to be less than $30,000.00. He said it could not be achieved by reductions in other areas without reducing the service provided by the Society.

In the light of inflation in 1976 at the rate of about 10% and growth in Sarnia which justified the employment of two additional workers in late 1975 for 1976, it was totally unrealistic for the Ministry to expect the Society to reduce its expenditures in 1976 to $598,256.00, let alone to $547,469.00.

I am satisfied that in early 1976 the "unequivocal" position of the Minister created for Mr. Lovatt a situation verging on frustration and despair. It could not help but have affected his approach to his work. It could not help but have been known to others in the Society who would be affected. It is, of course, impossible to measure or assess any such effect or even to say that it in any way influenced any decision relative to Kim.

That state of despair and frustration would of course have been somewhat alleviated in May, 1976 when the Ministry advised the Society that expenditures in 1976 in the amount of $638,836.00 and the 1975 deficit would be approved.

It is at least a co-incidence that the decision to return Kim on May 27, 1976 was made early in May, 1976 before that alleviation was known to the Society.

It may also be a co-incidence that Mr. Lovatt in his report to the Board of Directors in January, 1976 following the meeting convened by the Ministry in December, 1975 stated that, among other matters suggested by the Ministry, the societies were being asked to "trim services by cutting back on admission of children into care." He went on to say that to stay within the limit of the restraint "would require a reduction of 1/3rd children in care or a similar cut in staff."

Thus in January, 1976 thought was given to reducing expenditures by reducing the number of children in care. Kim was one of those children in care at the time. I am not prepared to find that concern about the budget for 1976 did not have an indirect almost insidious effect upon Kim. Mrs. Harvey's decision in February, 1976 that Kim should be returned to her parents may very well have been in part the result of the presence of that concern about the budget.

It is my view that it is intolerable for an organization such as the Society to complete five or six months or more of its operations for a year in uncertainty as to whether or not it will have funds available to meet what it perceives to be its needed expenditures.

That uncertainty can lead to two possible results neither of which is satisfactory. The societies, with caution and concern that their estimates will not be approved, may limit their expenditures during the several months awaiting the Ministry's decision. If their estimates are later approved they in effect, have available to them funds which should have been spent on their needs in the earlier months and which are in excess of their needs for the balance of the year.

Alternatively, the societies, with optimism and confidence that their estimates will be approved, expend funds on the basis of those estimates during the several months awaiting the Ministry's decision. If the Ministry does not approve the estimates they, in effect, have already spent funds which should have been retained for needs arising in the later months.

In the first instance the societies have possibly deprived or inadequately served the children whom they served in the earlier months. In the second instance they have done that to the children whom they served in the later months.

Only if the actual spending by the societies in the earlier months conforms to the amount eventually approved by the Ministry can there be a relatively consistent policy on expenditures. I am satisfied on the evidence that consistency and continuity are desirable features in the provision of services by the societies. With five or six or more months of each year elapsing before the societies are ensured that certain amounts will be available to them, it is virtually impossible for them to achieve those desirable features.

That would be particularly so if, as occurred in relation to the 1976 estimates, the Ministry sought to impose arbitrary and "across-the-board" restraints on the societies and, in fact, contrary to its published intention, refused to consider unusual local circumstances.

Mr. Macdonald's testimony was that after that experience in 1976 the Ministry sought to effect restraint, but, at the same time, to recognize local conditions.

I was tempted to doubt that testimony when I examined the process applied to the Society's estimates for 1978. Mr. Lovatt prepared an initial estimate in the amount of $821,500.00. It was rejected by the Ministry who proposed a reduction to $724,802.00. Mr. Lovatt prepared a second estimate in the amount of $776,800.00 which was being reviewed by the Ministry when Mr. Zwerver requested the

Ministry to withhold its review and decision pending his preparing, with Mr. McCabe, a revised estimate. That last estimate was submitted and quickly approved in the amount of $853,739.00.

I accept Mr. Zwerver's testimony that the amount of the last estimate was in keeping with the Ministry's guidelines and requirements for preparation of the 1978 estimates. He did voice criticism of Mr. Lovatt's earlier submissions to the effect that they had not met those requirements.

More significantly, as I consider the role of the Ministry in Kim's life, he acknowledged that the actual experience of the Society during the early months of 1978 was of assistance to him and Mr. McCabe in preparing their submission. Mr. Lovatt could not have had that actual experience as a basis for his initial submission and would have had only part of it for his second submission.

Having accepted that testimony of Mr. Zwerver I must conclude that by 1978 the Ministry was prepared to recognize local conditions. It had recognized that it was unrealistic to seek to apply restraint without regard for unusual local circumstances.

In my view it is imperative to the efficient operation of the societies that the Ministry grant its approval of the societies' estimates long before May, June or July of each year.

If the Ministry were to fulfill properly its duty to supervise, advise and inspect the societies there is no reason for there to be lengthy periods of time spent on review of the societies' budget submissions each year. The Ministry itself demonstrated that in relation to the Society in June, 1978.

I acknowledge that the demonstration occurred under unusual circumstances. The Society was the subject of much attention from the Ministry from December, 1977 and particularly from March 7, 1978 when Mr. Zwerver was appointed by the Ministry to be a Special Field Consultant responsible for the operation of the Society from March 13, 1978.

From March 13, 1978 Mr. Zwerver, in that capacity provided the supervision, inspection and advice that the Ministry had not been providing to the Society at least during the period from 1974 until 1978. In that capacity, with Mr. McCabe, Mr. Zwerver submitted the revised estimates of the Society for the year 1978 to the Ministry on Tuesday, June 27, 1978, presumably by mail from Sarnia to Toronto. On Friday, July 7, 1978 the Ministry gave its approval to that submission. The formality of approval took at most ten days including the weekend of the Dominion or Canada Day holiday and the postal delivery from Sarnia to Toronto.

I am satisfied that that speedy approval came about for two reasons.

Firstly, Mr. McCabe, as Acting Local Director of the Society, properly fulfilled all of the duties of that office and maintained a close liaison with the Ministry. Initially that liaison was in response to the Ministry's requests for more information and detail with reference to Mr. Lovatt's second submission. Later, as the inadequacy of that second submission was revealed to be larger than at first it appeared to be, Mr. McCabe, with Mr. Zwerver, sought and obtained the Ministry's consent to the preparation and submission of the third and final submission.

Secondly, the Ministry, as represented by Mr. Zwerver, physically in Sarnia and providing supervision, inspection and advice to the Society, was fulfilling its duties. Mr. Zwerver gave Mr. McCabe the full benefit of his experience and skills. In addition the Ministry's personnel in Toronto were kept informed by Mr. Zwerver and Mr. McCabe over the months as they prepared the submission.

With that type of assistance from the Ministry Mr. McCabe was able to prepare a submission which, when presented, was virtually assured of prompt approval because it met all of the Ministry's requirements and was supported by adequate documentation of the bases for its various statistical components and its predictions or estimates of future needs and demands.

In that one instance the Ministry properly and sufficiently involved itself in the preparation of the Society's estimates.

In my view the Ministry should and can provide the same sort of liaison to every one of the societies. It need not be concentrated into a few weeks at the beginning of each year. Its genesis would be adequate supervision and inspection of the societies to ensure that proper records were maintained by each society. It would then proceed through supervision and advice to ensure that each society was appropriately compiling, interpreting and applying the information contained in such records. It would of course be supplemented by further consultation and advice as to the adequacy of the services being provided by each society, including discussion of any suggestions for provision of new or enlarged services or the termination or reduction of any established services.

It might be argued that no valid estimates of expenditures to be made in any year can be made until the whole of the previous year's financial experience is set forth in audited financial statements. Without admitting the validity of that argument, I am prepared to accept it for my present purposes. Assuming adequate supervision and inspection by the Ministry during the preceding year, the audited financial statements are not likely to contain any surprises of any great substance.

In any event it is not likely that the preparation of such audited financial statements need take an excessive amount of time. The auditors retained by the Society submitted their reports in respect of each of the years 1973 to 1976, inclusive, no later than the 27th day of January of the following year. The auditors' report in respect of the year 1977 is dated February 20, 1978. No reason for the delay was given, but it may not be unfair to anyone to assume that the turmoil within the Society which manifested itself in December, 1977 intefered with the Society's usual audit procedures.

In my view it is incumbent upon the Ministry to involve itself in and to assist the societies in the preparation and presentation of their estimates.

I do not see the provision of such advice and assistance as in any way diminishing the autonomy of the societies. It is still open to them to decline to accept the views expressed by the Ministry's personnel and to submit estimates reflecting their own views to be processed in the usual way with the final decision to be made by the Minister who may or may not choose to concur with opinions earlier expressed by personnel of the Ministry.

The distinction between the actions and opinions of the Minister and those of the Ministry was illustrated by Mr. Macdonald as he testified. I asked him for his comments upon the tone of the reply by Mr. Taylor, then Minister, to Mr. Henderson and thence to the Society in February, 1976. His reply was:

> "I feel, Your Honour, that that piece of correspondence was a record from one Minister to another Minister within Cabinet, it was not a letter in which the Branch or the staff of the Ministry were involved at all and it was not one that we were, in fact, aware of, so, the tone of the letter is Mr. Taylor's responsibility. I don't think that it in any way indicated the tone of my relationships with the Children's Aid Societies at that time on monetary issues, and we attempted to be as flexible as we possibly could and as tough as we possibly could where possible. So, I have a hard time commenting on that letter because it was not a part of our regular communication process with the Children's Aid Society."

I appreciate that that letter by Mr. Taylor was perhaps prepared under circumstances different from those related to consideration of estimates, but I am satisfied that the views of the personnel of the Ministry will not necessarily prevail with the Minister over the views of a society, particularly if the latter appear to be supported by the report, findings and recommendations of a child welfare review committee.

In my view anything which can be done should be done to minimize the time in the current year during which the societies are without assurance or confidence as to the financial resources available to them. Ongoing consultation by and with the Ministry would seem to be one such thing. Each party would be immediately aware of the views of the other as they developed and the basis therefor and the validity of such basis. Each would have an opportunity to review and reconsider its opinion and the bases therefor in the light of the opinion expressed by the other and the bases therefor.

The ten days from June 27, 1978 to July 7, 1978 during which the Minister approved the Society's estimates were fewer than it took for the Ministry to respond negatively to the earlier submissions by Mr. Lovatt for the same year. His first submission was dated November 29, 1977 and the Ministry's response thereto was dated January 12, 1978. About 46 days had elapsed. Mr. Lovatt's second submission was dated February 16, 1978. The Ministry had not responded to that, apart from acknowledging its receipt, before Mr. Zwerver went to the Society on March 13, 1978. About twenty-five days had elapsed by then. A short time later the Ministry did request further information and still later the Society sought and received permission to prepare a new submission. There was no testimony as to when that occurred. The specific dates on which those events occurred were not stated by Mr. Zwerver. I believe from the testimony that when Mr. McCabe arrived at the Society on May 22, 1978 Mr. Zwerver was still attempting to gather material to respond to the Ministry's request for information.

In any event even after the expiration of about four months from November 29, 1977 to a short time after March 13, 1978, the issue of approval of the Society's estimates was unresolved and remained so for about three more months.

Mr. Zwerver expressed the opinion that the experience of the Society with reference to approval of its estimates was not atypical. I accept that testimony. In my view the Ministry should long ago have realized the difficulties that its procedures created for the societies and should have corrected the problem.

Mr. Zwerver's testimony was that the issue of the Minister's approval of estimates was "a fairly contentious issue." He said:

> "...It tends to drag on during the course of the year depending upon the amount of dollars in contention between individual societies and the Ministry and also the adequacy of the information that's available to make decisions on. I don't think that the timing related to the Sarnia, Lambton Society was particularly atypical. Certainly at that point in time to the best of my knowledge, very few if any societies had their budgets approved, but certainly the gentleman responsible for budget analysis was going through all the budgets to analyze and to make recommendations to Ministry staff, so that they could proceed with the issue of whether approval should or should not be given to a particular budget."

I infer from that testimony that one person was engaged by the Ministry to analyze the budget proposals of all of the societies. That would seem to be a task which in itself would be virtually impossible of completion by one person in a reasonable length of time. But then that analysis was followed by other proceedings within the Ministry to determine whether or not approval would be given.

With fifty societies submitting proposals at about the same time and one person responsible for analyzing each proposal, it is little wonder that the societies were left uncertain as to their position until late in the year.

The evidence upon the Inquiry indicated that throughout all of the years and the reorganizations and re-deployments of its staff, the Ministry did maintain a constant interest in the financial affairs and operations of the societies. The number of memoranda and directives issued to the societies by the Ministry establishes that to my satisfaction. The testimony, too, was that in the years critical to Kim, the years immediately prior to her birth and the two years during which she lived, the personnel of the financial arm of the Branch remained at a relatively constant level while the number of Field Consultants was reduced and the "readers" resigned or were moved to other responsibilities.

Nor did the Branch content itself by sending out "readers" to conduct financial surveys.

It would seem that while the Branch and the Ministry maintained a constant interest in the financial affairs of the societies, that interest was directed towards matters of form and procedure. The Branch required regular financial reports during each year and audited statements at each year end. By reason of the lack of supervision and inspection of the societies, and in particular of the Society, the Ministry did not assist the Society in the preparation of its annual estimates.

I am aware that the Ministry did issue guidelines and memoranda of a quite general nature. Those relating to the imposition of the 5.5% limit on increases from 1975 to 1976 were examples of that sort of memoranda. They were not specifically directed to the problems that might confront the individual society.

Even administrators and workers, as highly skilled and experienced as Mr. Zwerver and Mr. McCabe were, felt it necessary to have ongoing discussions with the Ministry's personnel over a period of months as they prepared the Society's submission in the months of March to June, 1978. I appreciate that the state of the Society's records as found by Mr. Zwerver and Mr. McCabe contributed to the difficulties they encountered during that time.

My view is that, if the Ministry had been providing to the Society the supervision, inspection and advice which it should have provided, the Ministry should and would have been aware of the deficiencies in the Society's records and procedures.

In my view the Ministry, before March, 1978, did not provide the guidance and assistance in financial matters which it should have provided to the Society.

I am not to be taken as excusing the Society and its personnel, especially Mr. Lovatt as Local Director, for the deficiencies in the Society's records and budget proposals. They and he bear the initial responsibility for the creation of those deficiencies, but the Ministry should have been aware of them and should have required the Society to correct them. The Ministry then shares with them responsibility for the continued existence of the deficiencies.

PART IV

Standards of Service

There was considerable testimony upon the Inquiry as to the need or desirability for the establishment, maintenance and enforcement of standards to be met by the societies in the performance of their duties.

That testimony tended at times to extend beyond the concerns of this Inquiry. For the purposes of the Report I shall attempt to confine my comments to the portions of that testimony which related directly to the provision of services by societies in relation to actual or suspected or reported instances of abuse to children. Kim's was such an instance.

On that testimony I am satisfied that the preparation of documents to incorporate standards for the management of cases of child abuse is a formidable undertaking. It requires knowledge, skill, experience and time.

With all due respect to the Society and its personnel, those elements were not present in the Society in the years immediately prior to and during Kim's life.

On the testimony I would expect that the Society was not alone in that position.

The general tenor of the testimony was to the effect that, because of the size of the task, the duty lay upon the Ministry to develop and publish standards for the handling of various types of cases, including cases of child abuse, by the societies.

Until the Inquiry was convened the Ministry had not fulfilled that duty.

There was testimony that even prior to Kim's birth, Dr. Hugh Hanson, in a report commissioned by and made to the Ministry in 1974, had urged the Ministry to develop standards to be applied in child welfare cases. That would include cases of child abuse.

Mr. Macdonald and Mr. Mainville in their testimony acknowledged that the Ministry was responsible for the development and publication of such standards. Mr. Mainville added that the Ministry bore the further responsibility of ensuring that the societies met those standards.

It is my view that that testimony is correct. The development and enforcement of such standards falls clearly within the Director's, and thus the Ministry's statutory duty to supervise and advise the societies.

In 1976, at about the time of Kim's death, The Ontario Association of Children's Aid Societies did publish a lengthy document entitled "Guidelines for Practice and Procedure in Handling Cases of Child Abuse." The Ministry was not directly involved in the preparation of that document although it was financially involved through its funding of the Association directly and indirectly through the societies.

Even if the Ministry could take credit for that publication and claim it to be a fulfillment of its statutory duty to develop and enforce standards it was too late for Kim. The document indicates it was published in July, 1976, but the uncontradicted testimony was that the Society did not receive a copy of it until after Kim's death.

It would seem that Dr. Hanson's report was not the first document to call upon the Ministry and fulfill its duty and prepare standards. Neither the recommendation of Dr. Hanson's report nor those of its precursors was acted upon by the Ministry. The

Ministry's response to Dr. Hanson's report seems to have been to enter upon a round of reorganization which never was fully accomplished although much effort was expended by the Ministry and some of the societies, including the Society.

Some aspects of the reorganization were undertaken. One such aspect was the termination of the services of the "readers." Had the Management Information System, part of the proposed reorganization, been developed there would have been no need for the services provided by the "readers." The "readers" were allowed to disappear, but the Management Information System was not implemented and its development was abandoned before completion because of some other changes within the Ministry.

What might be viewed as the tragedy of all of that is that effort and time were spent prior to Kim's birth and during her lifetime in an effort to accommodate case management procedures within some technological framework of recording cases. Had that been done it might have produced good results at some time in the future. But in the end, that effort was abandoned, unfinished. The time and effort spent produced effectively nothing.

But, in all of that, the Ministry neglected the urging of Dr. Hanson's report to the effect that development of standards was of paramount importance and should proceed immediately in 1974 regardless of whatever steps were taken by the Ministry in reorganization or otherwise.

It is pure conjecture of course, but it would seem that, had the Ministry, in 1974, followed the advise and urging of Dr. Hanson and set about at once to prepare standards for the handling of cases of child abuse, there is every likelihood that at least preliminary or draft standards might have been published before September, 1975 and thus would have been available to the Society during all of its involvement in Kim's life.

If that had happened one might hope that the Society's management of Kim's case would have produced happier results.

The logic of Dr. Hanson's recommendation appeals to me. It is my view that the development of appropriate standards of case management was of immediate concern and should have proceeded no later than 1974. Indeed it would seem that the Ministry had been urged even prior to 1974 to develop standards.

I am of that opinion in full realization that any standards so developed might require amendment from time to time to accommodate changes within the organization of the Ministry or the deployment of its personnel.

But surely standards of case management are not static. Learning and experience inevitably lead to change. It is for that reason I share Dr. Hanson's view that, regardless of whatever else it might have undertaken, the Ministry should have begun to develop such standards in 1974. Those standards would require virtually constant examination in the light of developments in Ontario and elsewhere in the field of child welfare. Dr. Turner spoke of the need of individual social workers to keep themselves current in their practices and procedures. I should think the Ministry has an even higher duty to keep itself current and that would include keeping its standards current.

When I recall the frequent use by employees of the Ministry of words and phrases to the effect that the Ministry was studying or reviewing or looking at various aspects of its operations it would seem to me that an ongoing review of its standards might very well have been a part of all that study and the like.

It may be that the Ministry was seeking an ideal organization. However in so doing it failed to do some of what it could and should have done. One such thing was the development of standards for the management of cases of abuse of children.

An adjunct of the development of such standards would have been performance by the Ministry of its statutory duty to supervise and inspect the societies to ensure that the societies were meeting those standards.

At the same time, 1974 and 1975, that the Ministry disregarded Dr. Hanson's recommendation to proceed with the immediate development of such standards, the Ministry found itself without sufficient or adequate personnel, in terms of numbers and of qualifications, to enable the Ministry to supervise, inspect and advise the societies. It had only two Child Welfare Supervisors to deal with fifty societies. Its staff of readers had disappeared by permitted attrition. Even if the Ministry had developed standards it could not have ensured that the societies would even try to meet them.

It was not until late 1978 that the Ministry was able to announce its intention to conduct examinations or reviews of the operations of the societies. Even then the standards to be met by the societies were just being developed.

I am satisfied that the flurry of activity in the Ministry in 1978 to develop standards and to institute reviews of the societies by qualified persons came about at least in part, a very large part and perhaps solely because of the publicity surrounding the highly publicized cases of abuse, including Kim's, which were mentioned during testimony upon the Inquiry.

While each of the societies should be free to develop its own standards for the management of various types of cases, those standards should meet at least the standards developed by the Ministry as the minimum standards acceptable anywhere in Ontario. It may be that the standards developed by the Ministry will require recognition of the presence or absence of certain facilities in some regions of Ontario.

The management of Kim's case by the Society was so grossly inadequate that one would be hard pressed to suggest that the Ministry's failure to develop standards for the societies' management of child abuse cases played any part in the tragedy.

However, the corollary to the development of such standards should have been inspection and supervision of the societies by the Ministry to ensure that the standards were met. The absence of such inspection and supervision by the Ministry permitted the mismanagement of Kim's case by the Society.

I am satisfied that what happened in Kim's case was so patently contrary to good practice and procedure in cases of child abuse that any supervision or inspection of the Society by any reasonably qualified social worker on behalf of the Ministry would have immediately revealed the failures and deficiencies of the Society.

None of the highly qualified persons who testified upon the Inquiry needed a written code of standards to enable him or her to express the opinion that what happened in Kim's case was not in keeping with normal, usual, reasonable and accepted standards of case management and decision making in cases of child abuse.

PART V

Records and Returns

During Kim's lifetime the Ministry maintained a Central Register or Registry of actual or suspected cases of abuse of children. In this portion of this Chapter I shall call it the "Registry."

I was unable to find any provision in the Act or the Regulations thereunder to authorize or govern the establishment and maintenance of the Registry or to require anyone to report any matter to the Registry.

I am satisfied that the Registry was conceived as a means of assisting the Ministry and the societies to cope with the problems of abuse of children. One thought at its inception in 1966 was that it would serve as a means of tracking or tracing persons who abuse children and move about, from hospital to hospital, from doctor to doctor, from town to town. That hope was not fulfilled. It was found that those who abuse children do not move about as much as had been believed.

I have already described how the Society filed with the Registry reports describing some of the abuse which Kim suffered. In effect each report was merely read by someone who was not a qualified social worker and, if each of the boxes of the form had something in it, it was filed. Only if the Society had not filled in all the necessary boxes or if it had asked some specific question about the case or if it was apparent even to a clerical worker that some follow-up was expected would anything more have happened.

In Kim's instance the lethargy of those who maintained the Registry was exceptional. I have outlined their inactivity and lack of interest or concern.

The Registry was of no use to Kim. Although the Society reported her case to the Registry the Ministry did nothing to help her or to concern itself effectively with her case. The reports by the Society merely added to the statistics and accumulation of paper in the Registry and thus in the Ministry.

The Registry, like the matter of development of standards, has been considered in earlier reports commissioned by the Ministry. One such report was prepared in 1973 by Dr. Greenland and others. I have mentioned it earlier.

One chapter of that latter mentioned report is entitled "Legislation and the Central Register." That chapter is reproduced as Schedule 2-J to this Report. The testimony upon this Inquiry supports the general views expressed in that chapter.

The testimony upon the Inquiry was that any means of reporting, recording and analysing or assessing instances of abuse to children will require a common vocabulary and an agreement as to what constitutes abuse in its many forms. During all of the time relevant to this Inquiry there was no such common vocabulary or agreement. The result was that one society might determine that it should report an incident to the Registry whereas another society, dealing with an essentially identical incident, might determine that it need not report the incident to the Registry. Thus, Dr. Greenland's report in 1973, was another call to the Ministry to develop guidelines defining child abuse so that throughout Ontario there might be a common standard used to determine what instances must be reported to the Registry.

It was not until 1978 that the Ministry, in legislation enacted as The Child Welfare Act, 1978, set forth a more comprehensive definition of child abuse. The nature of incidents which would require a report to a society was enlarged so as to include sexual molestation, malnutrition and mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death.

In the same legislation in 1978 the Ministry secured legislative authority for the maintenance of the Registry and for the requirement that societies report to the Registry all incidents of abuse of children verified by the societies.

Time alone will determine whether or not the Registry, now authorized or supported by legislation, will be any more effective than the useless appendage to the Ministry which was the Registry to which the reports in respect of abuse to Kim were filed.

The testimony upon the Inquiry was to the effect that, even prior to the enactment of The Child Welfare Act, 1978, the Ministry in 1978 introduced some new procedures for the handling of reports to the Registry.

It was abundantly clear that until those new procedures were employed there was no assurance that any employee or officer of the Ministry with any knowledge, skill or experience in social work, particularly in relation to child welfare and child abuse, would be aware that any report of abuse or suspected abuse had been filed with the Registry. Operation of the Registry was purely a clerical function. A clerk opened the envelope, looked at the report form and, for all practical purposes, if all necessary spaces were filled, acknowledged its receipt, typed a file card and assigned a number to it and then filed the report.

Kim's case was an example. Despite the reports to the Registry in September, 1975 and April, 1976, neither Mr. Charko nor Mr. Mainville, the two

Child Welfare Supervisors responsible for the supervision of the Society, were aware of her case. Mr. Macdonald, the Director, became aware of Kim's case only in March, 1977 when Dr. H. B. Cotnam, Chief Coroner of Ontario, wrote to advise him of it.

If Kim's was not a case which should have attracted attention from the Ministry when reported in September, 1975 and April, 1976, I cannot imagine what would be needed to attract the Ministry's attention.

In 1975 and 1976 the Registry, maintained by the Ministry since 1966 without specific legislative authority and without legislative support for any requirement for reporting to the Registry, was utterly useless. It was a facade, an outpost of the empire of some bureaucrat.

The Registry in 1975 and 1976 did Kim no good. It may even have worked against her. There was no testimony to support the latter possibility.

The new procedures employed by the Ministry in 1978, even before the enactment of The Child Welfare Act, 1978, required the clerk receiving reports to the Registry to make copies of each such report and, in addition to all of the earlier merely clerical tasks, to deliver a copy of each report to the Ministry's Child Welfare Supervisor responsible for the supervision of the society which filed the report. That would seem to ensure that someone with sufficient knowledge and experience to enable him or her to make a proper assessment or analysis of the report was aware of it. It would then be the responsibility of the Child Welfare Supervisor to do whatever was necessary. That might include a request for further information from the Society or a meeting with the Society to discuss the report and to furnish advice as indicated.

That new procedure, which hopefully continues, should ensure that knowledgeable and experienced persons in the Ministry are aware of and are dealing appropriately with every case of abuse or suspected abuse reported to the Registry.

I note that implementations of that procedure did not await and so did not require any amendment of legislation or regulations. It might very well have been implemented long before if the Ministry had so wished.

There remains the problem of ensuring that all cases which should be reported to the Registry are reported. The legislative requirement is in existence. It is up to the Ministry, in fulfillment of its duty to supervise and inspect and advise the societies, to ensure that each society does properly report each incident which it should report.

In testimony upon the Inquiry I heard of a procedure devised by the Ministry in 1978 and which was expected to be operational in 1979. That procedure entails complete operational reviews by the Ministry of about ten societies in each year. Thus each society would undergo a thorough review each five years.

That too is an improvement. The Ministry was about to begin to fulfill part of its duty to supervise and inspect the societies. Hopefully that practice will continue and will not, in some reorganization or redeployment of staff, be discontinued or allowed to disappear without adequate replacement and without notice to anyone as had happened to the "readers."

One recommendation I propose to make is that the Minister should ensure, by his or her own inquiry within the Ministry, that these two procedures, or adequate replacements, are maintained even after the publicity of Kim's case and others like it has subsided. They should not be allowed to wither and disappear as the "readers" did in 1974 and 1975 so that there was a hiatus, to use Mr. Macdonald's word, until 1977 when the Ministry was able to get back to the level it had been at in 1974.

Quinquennial reviews are not sufficient. That may be frequent enough for complete and fully probing examinations of each society's organization, administration, personnel and procedures. But they should be supplemented by more frequent, if less thorough, inspections and reviews by the Child Welfare Supervisors of the Ministry.

Kim was born and she was abused often and she died as a result of abuse all within a period of less than twenty months. A review of the Society at five year intervals would not have helped her unless such a review happened to have occurred between June, 1975 and July, 1976.

The testimony was that children under the age of three years are the children most likely to be abused. Reviews at five years intervals would not be helpful to them.

Even annual reviews may not be sufficient, but, in my view, if the Ministry's personnel, at irregular times throughout the year, visit with each society and examine some aspects of its operations or administration, the likelihood of another case such as Kim's will be reduced. I am satisfied that the possibility of inspection by the Ministry will tend to ensure that the operations generally of each society are maintained at a satisfactory level. Mr. Patersen's testimony supports that view.

In all of this I am not suggesting anything in the nature of a witch-hunt, but that the more frequent inspections will really form a part of the Ministry's supervision of each society and enable to Ministry's personnel to advise the personnel of each society in respect of any problem which may arise either in any one case or in the general practice of the society.

In my view, at least until 1978, the Ministry did not make any meaningful use of the reports of abuse submitted to it by the societies. There may have been some information from those reports which provided some basis for statistical purposes, but, given the absence of a common definition of what was to be reported and given the absence of a common procedure as to when and how such reports were to be made, it would seem that statistics based thereon would be virtually of no value.

In February 1978 the Ministry convened the Child Abuse Task Force which in this portion of the Report I shall call simply the "Task Force."

The report of the Task Force was submitted to the Ministry by letter dated June 19, 1978. Dr. Ralph Garber was the chairman of the Task Force. For ease of reference I shall call the report of the Task Force the "Garber Report".

I have not examined the document establishing the Task Force, but the Garber Report states that:

"The task force's mandate was to examine:

° the response to the needs of abused children; the relationship of such children to their families; decision-making related to suitable alternative care, supervision of and support for the family

° the services provided by the Children's Aid Societies, demonstrated by how acute and chronic situations are defined and responded to."

For its purposes the Task Force defined child abuse as being physical abuse, gross neglect and sexual molestation. In the light of testimony upon this Inquiry that would appear to be a somewhat limited definition unless it was meant to give to the words "gross neglect" a broad meaning so that they would include, for example, emotional abuse and failure to thrive.

The Task Force wrote in the Garber Report:

> "The task force recognizes that prevention is the first line of defence and is the most desirable solution."

That would appear to be in agreement with Dr. Bates' opinion as to the immediate importance of and need for the establishment and maintenance of programmes seeking to prevent abuse of children.

The Task Force regarded its responsibility as being "to look into what help could be provided after the abuse has occurred." It wrote that it had "a narrow focus and a broad concern."

In a portion of the Garber Report bearing the Caption "Dealing With the Problem" the Task Force wrote that its broad concern was in prevention. It said its research reports required further study. That portion of the Garber Report concluded with the sentence:

> "The Minister should consider establishing an advisory group on child abuse with a frame of reference reflective of the task force's broad concerns."

In the opening paragraph of the preface to the Garber Report, the Task Force wrote of public concern for children who are badly abused. The last sentence of the paragraph was:

> "The government shared the communities' concern, since it had the legal responsibility to protect children whose lives are in jeopardy."

That concluding sentence does not appear to be in accord with the testimony of Mr. Macdonald who seemed to interpret The Child Welfare Act so that that legal responsibility lay upon the children's aid societies. Nor is that concluding sentence in accord with other statements in the Garber Report to the effect that the Ministry and the children's aid societies share responsibility for child protection.

In the latter area the Garber Report contained the statement that:

> "The Ministry provides resources, monitors CAS activities, and sets standards and policy; the CAS provides direct service to children in need of protection."

The testimony upon the Inquiry causes me to doubt the validity of the statement that the Ministry monitored the activities of the children's aid societies unless the Task Force gave a very restricted meaning to the verb "monitor." I have similar doubt as to the validity of the statement that the Ministry set standards and policies. That doubt of mine is reinforced by the recommendations of the Task Force itself and the Ministry's responses thereto.

There were twelve members of the Task Force including Dr. Bates and Mrs. Farina who were witnesses upon the Inquiry. Mrs. Farina at the time of her service on the Task Force was Associate Executive Director of the Ontario Association of Children's Aid Societies. In June, 1978 she was employed by the Child Welfare Branch of the Ministry as a Programme Development Specialist. In that capacity she was responsible for the co-ordination of the Ministry responses to the recommendations of the Task Force.

Copies of the Garber Report and the Ministry's response to the recommendations of the Task Force were produced as exhibits upon the Inquiry. The Ministry Response is dated September 8, 1978. Mrs. Farina testified at some length with reference to the two documents.

The Task Force conveniently grouped its recommendations with concise statements after relatively brief comments expressing the rationale therefor.

The Ministry responded to each of the recommendations separately and in great detail. For the purposes of this Report I have attempted to summarize each response as I understand it to be when supplemented or explained by oral testimony upon the Inquiry.

The first three recommendations followed a brief reference to the responsibilities, roles and relationships of the Ministry, the Ontario Association of Children's Aid Societies and the individual children's aid societies, with particular reference to section 6(2) of The Child Welfare Act which defines the purposes of the children's aid societies. There was no specific mention of section 2 of The Child Welfare Act which defines the duties of the Director appointed for the purposes of that statute.

Some of the expressions in the preamble to those recommendations appeared significant in the light of the proceedings of the Inquiry. The Garber Report used the letters CAS as an obvious abbreviation for Children's Aid Society or societies. The statements I refer to were:

> "The CAS must be given a clearer mandate by the Ministry. Individual CASs need more

> resources in order to play a more effective role in protecting children. They must strive to become visible, assertive, knowledgeable, resourceful and passionate advocates for children.
>
> The task force finds both the Ministry of Community and Social Services and the Children's Aid Society remiss in setting standards and monitoring their performance. The mandate to the CAS has not been accompanied by resources, particularly the administrative, organizational and professional capabilities needed to carry it out."
>
> and
>
> "Clear, precise, consistent Ministry guidelines would help CASs to respond to acute and critical situations in all these areas. Solicited submissions, and responses to the research questionnaire, contained repeated requests to the Ministry that it supply immediate additional and strengthened standards of service in all areas. The present O.A.C.A.S. guidelines were not disseminated, not uniformly available, and not widely utilized."
>
> and
>
> "The quality of protective services within the Province of Ontario varies markedly from CAS to CAS....The fact that the unevenness of service has persisted and is so pervasive is most disturbing."

The first three recommendations in the Garber Report were:

> "That the Ministry provide standards of service for all CAS procedures and practices and monitor all CASs to ensure the guidelines are followed.
>
> That the Ministry prepare standards of service for complete implementation of

Section 6 of The Child Welfare Act which defines the purposes of the CAS.

That special attention be given to the involvement of CAS staff associations in planning and policy determination."

The Ministry's response was that the first recommendation was the most important of all of the recommendations "because it addresses what is expected of the [Children's Aid] Societies in the level of service, and what is expected of the Ministry in monitoring" and "brings into discussion the relationship between the Societies and the Ministry."

It would seem to me that the recommendation also addresses, to use the words of the Ministry's response, what is expected of the Ministry in performance of its statutory duty, imposed upon the Director under The Child Welfare Act, to advise and supervise children's aid socities. That duty is separate and distinct from the duty to inspect the operations and records of the children's aid societies which would encompass what is meant by "monitoring."

The Ministry then went on to say that the provision of standards would require programmes of training to interpret the standards and to give guidance in their application. Mrs. Farina expanded upon this to say that guidelines written by experts would be of value only if those who were to use them, presumably the staff of the children's aid societies, understood them. Assurance of that understanding could be obtained only by adequate training of the children's aid societies' staff.

In September, 1978 those training programmes had not been begun, but the staff of the Ministry was "talking" and "planning." From the testimony upon the Inquiry such were not unusual activities in the Ministry.

Mrs. Farina went on to say that the first recommendation in the Garber Report was an expression of concern about the absence of uniformity of standards among the children's aid societies.

The Ministry's response employs many of the words and phrases used by Mr. Macdonald in his testimony upon the Inquiry and which I have mentioned elsewhere.

It spoke of the Ministry being "committed to developing standards of service in all areas of children's services" and of this being "a top priority of the Standards and Information Branch." It is silent as to when the commitment was made and how and to whom it was made. It is silent as to when the Standards and Information Branch was formed and given responsibility for the task. I have examined Organization Charts of the Ministry for July, 1977 and May, 1978 and I see no such branch although in July, 1977 there was a box entitled "Child Care Standards" and in May, 1978 Mrs. Farina's name appeared in a box entitled "Standards Development."

In her testimony upon the Inquiry Mrs. Farina spoke of the Standards and Information Branch as having been formed as a branch of the Children's Services Division formed early in 1973. The organization charts do not bear that out, but that could be merely a question of terminology.

The Ministry's response spoke of one set of standards having been completed in September, 1978 and others being "in the process of development." It is silent as to when the "process of development" of those others began or the stage at which it then was.

It spoke of this being a "massive undertaking" and of its being "anticipated" that all would be "ready for discussion early in 1979." It is silent as to who would be involved in any such discussion.

It then became somewhat defensive of the Ministry's past record and said:

> "We have not been totally without standards for the work of CAS's, and particularly for cases of child abuse."

It mentioned that the Ministry "worked cooperatively with your association," which I presume to mean the Ontario Association of Children's Aid Societies, in producing guidelines for Handling Cases of Child Abuse published by the Association in July, 1976.

The paucity of the Ministry's effort is best illustrated by the fact that the next sentence, immediately after the reference to July, 1976, mentioned that "a directive on child abuse cases" was sent to the children's aid societies in April, 1978. There is no mention of any specific activity in the intervening twenty months.

It did speak of "many directives and memoranda" dealing with specific aspects of child abuse cases having been sent "over the past few years." These were, in September, 1978, "currently being assembled in a Program Manual which should be completed by November [1978]." Opposed to that vague statement is Mr. Lovatt's precise testimony which was not challenged upon the Inquiry.

Mr. Lovatt was asked the following questions and responded as follows:

> "Q. Now, what sort of guidelines up to that point did the Society have on the question of abuse?
>
> A. None. Nothing had been developed. Each case was dealt with by the staff dealing with the case.
>
> Q. Was there no guidelines from anywhere on the question of abuse?
>
> A. No.
>
> Q. From the Ministry?
>
> A. No, not at that point.
>
> Q. From the O.A.C.A.S.?
>
> A. No, not at that point."

In the exchange "that point" was at a time after Kim had died and her parents had been charged with manslaughter.

Mr. Lovatt was asked to review the various directives and memoranda from the Ministry to the children's aid societies and to indicate the number which dealt with financial matters and the number which dealt with child abuse. His reply can best be represented in tabular form which I have prepared from the index on which he based his testimony.

The table includes unnumbered memoranda which he did not include in his oral testimony.

Year	Total Number	Number re Financial	Number re Abuse	Number re Other
1965	21	5	0	16
1966	72	20	1	51
1967	55	16	2	37
1968	38	14	0	24
1969	37	10	0	27
1970	30	14	1	15
1971	33	9	0	24
1972	38	13	0	25
1973	31	9	0	22
1974	22	5	0	17
1975	42	15	1	26
1976	42	15	6	21
1977	45	13	7	25
TOTALS	506	158	18	330

It is apparent that in 1976 and 1977 there was a marked increase in the number of memoranda relating to child abuse.

The index to which Mr. Lovatt referred was forwarded by the Minister over the signature of Mr. Macdonald as Director of Child Welfare. Even in that memorandum dated February 15, 1978, there were the so familiar words "...we are in the process of reviewing and updating these collections [of memoranda]. When this review and revision has been completed we will advise you...".

One is left to wonder if that process of review and updating in February, 1978 was the same as that mentioned in this September, 1978 response to the Garber Report whereby the Ministry declared that directives and policy statements were "currently being assembled in a Program Manual which should be completed by November."

Mr. Lovatt said he relied on the Ministry for leadership in new matters with which children's aid societies were being confronted or of which they should be aware.

Another paragraph of the Ministry's response begins with the following sentences:

> "In response to the need to assist specifically in dealing with child abuse, the Ministry arranged with Ross Dawson of the Algoma CAS, to produce a set of guidelines for the management of child abuse cases. We are impressed with the quality of these guidelines and are presently deciding on how best to introduce them."

Mrs. Farina in her testimony spoke of the Guidelines for Practice and Procedure in Handling Cases of Child Abuse published by the Ontario Association of Children's Aid Societies in July, 1976. She said "Mr. Ross Dawson was actually the author of the case handling part of these guidelines," which, she said, had been "endorsed by the Ministry."

At some time after July, 1976 the Ministry retained Mr. Dawson to produce a set of guidelines.

Its statement of being "impressed" by Mr. Dawson's guidelines is somewhat after the fact.

My puzzlement is not allayed by reading the 1976 publication the introduction to which contains the following three paragraphs:

> "Guidelines for CAS practice and procedures in the handling of child abuse cases are long overdue. Lack of a common understanding in definition and in identification, and disparities in case handling, make it difficult to set out definitive guidelines at this time.

> The Ontario Association of Children's Aid Societies requests that practitioners review the contents of this document, test the guidelines offered, note what seems practicable and what not, and to add (there are some obvious gaps), delete and otherwise modify. After a few months of testing we will request that you inform us of your experience. In about a year's time then, with your help, it may be possible to produce a set of guidelines for practice and procedure in child abuse that will be relevant and practical for all Children's Aid Societies in Ontario, and that will give some assurance of consistency in practice across the province.
>
> It is recognized that throughout Ontario there are regional differences which complicate efforts to standarize any service. The fiscal problems of the societies confound the problem, most notably in the area of preventive services, and local areas vary in their tolerance of child abuse. In spite of these difficulties, however, we still need to establish quality guidelines and to encourage all CASs to aim for the optimum level of service."

That is a clear statement of a long standing need for guidelines and of the difficulties flowing from lack of uniformity. It also is a recognition of the need for the testing of the guidelines and for amendment as may be indicated after testing. It is a statement as to the fiscal problems faced by the children's aid societies "in the area of preventive service." These were not phenomena observed for the first time in 1976 or in 1978.

Two years later the Ministry was still considering how to introduce them and how to train personnel to apply them and the Garber Report made mention of the lack of uniformity.

The reference to the Ministry "presently deciding on how best to introduce them" is puzzling to me. They were introduced when published and distributed in 1976. The Ministry's response makes sense only if the word "introduce" is replaced by "enforce" or "apply" or a synonym thereof or if one is speaking only of the revision made in 1978.

Mrs. Farina in her testimony said that the Task Force

> "discovered that the children's aid societies looked to the Ministry to establish standards. They seemed to feel that if the Ministry did it the standards would have more authority."

Mr. Lovatt's testimony that he looked at the Ministry for leadership was to a similar effect.

I would hardly think that the Task Force discovered that situation if one uses the word "discover" in the sense of finding it for the first time.

The Ministry's response went on to speak of another committee's efforts to seek to define "neglect." That committee had "developed" a document and the Ministry was "hoping" it would continue its work.

The response spoke also of the Ministry's task with reference to "revised legislation" I presume that to be a reference to what was then Bill 114 and which became The Child Welfare Act, 1978. That included preparation of regulations for reporting to the Central Registry of Child Abuse and the use of that Registry.

The response spoke of special programmes to enable children's aid societies to employ additional temporary staff to assist in the management of child abuse cases/

The second part of the Ministry's response to the first recommendation in the Garber Report opened with another fine sounding statement that the Ministry "see[s] training programs as a vital part of standard development." It then sets out the

Ministry's "wish to begin staff training this year" and the belief that that can be done, even though "longer-term standards papers will not be finalized until later," because "there are areas that are basic and will remain basic to any standards." It points out that availability of funds will affect the pace of any such programme.

That reference to the presence of basic areas in any standards begs the question. If training was seen by the Ministry "as a vital part of standards developments" why was any training programme still only in the design stage more than two years after the Ontario Association of Children's Aid Societies published the initial set of guidelines in July, 1976. Even in 1976 the guidelines then published were stated to be "long overdue" and it was the Ontario Association of Children's Aid Societies rather than the Ministry which effected the publication.

The defensive posture of the Ministry's response continued with its reference to the Child Abuse Programme. That programme was said to have been "involved intensively in different types of training and education programs related to child abuse" over the preceding year. One must wonder at the use of the adverb "intensively" because such training went on in only fifteen communities throughout Ontario. That training was said to have been "accessible to personnel in 25 children's aid societies" and to have been well-received. There is no indication of how many persons attended and from how many children's aid societies they came. There is no indication of the nature of the training, except that it was "inter-disciplinary."

The paragraph concluded with another promising sentence with a powerful word indicating aggressive forward action. It was:

> "The second stage of this thrust is a program designed for the treatment aspects of child abuse cases."

That portion of the Ministry's response continued with reference to efforts to introduce child abuse training into the curriculae of various educational institutions. It concluded with another statement of promise, effort and reorganization by the Ministry as follows:

> "A less direct, but nevertheless effective, educational componenet for the Societies is inherent in the plan we are working on to help us deal more effectively with difficult individual cases. This will be announced in the next two months as part of our reorganization plans."

As to monitoring by the Ministry, the Ministry's response was that that raised complex issues as to the relationship between the Ministry and the children's aid societies. "The Ministry accept[ed] the need to take a stronger role," but it seemed to query how that might be achieved given the fact that the children's aid societies were separate corporations and "an employer-employee relationship [was] inappropriate."

The written response said that the Ministry recognized the need for clarification of expectations and relationships of the Ministry and the children's aid societies.

Mrs. Farina testified that the Ministry did not wish to undertake to monitor every case handled by the children's aid societies. She spoke, as did the written response by the Ministry, of a review or re-studying of the role of the Child Welfare Field Consultants to see if they might have more time to work directly with the children's aid societies.

The written response and Mrs. Farina said that the Ministry was planning to conduct "operational reviews of all [children's aid societies]," with a view to ten being reviewed each year until, at the end of the fifth year, all will have undergone such a review.

As I heard the testimony I sensed that it was the Ministry's intention that the programme of operational reviews would continue even after all of the children's aid societies had been reviewed. Upon reading the Ministry's response and Mrs. Farina's testimony as transcribed I do not find a clear statement to that effect although Mrs. Farina presumed it. It would seem to me that only an on-going programme of such reviews would produce any lasting and long-term benefits.

The exact nature of such reviews was not set forth. They apparently will involve the staff and boards of directors of the local children's aid societies being reviewed.

Both the written response and Mrs. Farina spoke of the Ministry's wish to encourage the children's aid societies to develop their own systems of self-monitoring so as to enable them to recognize their weaknesses and to seek appropriate assistance.

In addition, the Ministry was applying further financial audits to the children's aid societies.

Like the first recommendation in the Garber Report the second recommendation called upon the Ministry to prepare standards. This time the standards were to be in relation to services to achieve "complete implementation of section 6 of the Child Welfare Act."

The Ministry's response was that this recommendation "demands a comprehensive review of the boundaries of the programs of the Societies and the requirements of the Ministry."

The Ministry again recognized the need for clarification of the relationship of the Ministry and the children's aid societies. The Ministry recognized that it was difficult for the children's aid societies to know exactly what was expected of them in certain areas and how they fund their actions.

One such area of particular difficulty was contained in section 6(2)(c) of The Child Welfare Act. That paragraph provides that one of the purposes of every children's aid society is to:

> "provid[e] guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children."

The Ministry's response stated that:

> "the availability of funding creates difficulties in implementation."

Mrs. Farina added a further dimension when she spoke of the absence of a definition of "prevention" and of efforts to achieve a clearer definition of "expectations" and said this was the only part of section 6 which created problems for the children's aid societies.

Again the written response stated that the Ministry over several years had "issued a number of directives, memoranda and policy statements which clarify many expectations in regard to the mandated responsibilities of the Societies." These were to be assembled in the Program Manual which Mrs. Farina said the Ministry was "developing."

The written response and Mrs. Farina both mentioned that papers are being "developed" to examine the role of children's aid societies generally and the role of the Ministry in the provision of preventive services. When that latter is complete and after consultation with the children's aid societies and other the Ministry

> "will make a decision about what kinds of preventive services it is ready to pay for, and also make the decision on who, what body should be carrying out those particular services."

Mrs. Farina suggested that that will be a difficult decision for the Ministry and will probably be achieved with regard to the needs of the local communities rather than by "an umbrella kind of endorsement of one service."

The third recommendations in the Garber Report was that special attention be given to the involvement of children's aid societies staff associations in planning and policy determinations.

Mrs. Farina said that recommendation resulted from the quality of the submissions made by staff associations to the Task Force. She felt it was a practice already accepted by the Ministry.

The Ministry's written response is to the same effect.

The Task Force then wrote in the Garber Report that evaluation comparisons of children's aid societies were impossible because records kept by children's aid societies were "disparate, incomplete and unique." They also wrote of "information gaps and time lapses in the reports of child abuse to the Central Registry" which diminished the value of that registry.

The fourth recommendation in the Garber Report was:

> "That guidelines for inclusion of data and diagnosis emphasize uniformity of reporting. Staff support at the Ministry should be made available to assure that the system now being formulated can be made operational and guidelines for record keeping by local CASs be developed and standardized across the province".

The Ministry in its response and Mrs. Farina in her testimony pointed out what is obvious from the Garber Report. The Task Force was concerned with two forms of reporting. The one form related to the preparation of material for inclusion in the files maintained locally by the children's aid societies. The other was the form of reporting to the Central Registry of Child Abuse. There was a great diversity in style and content of reports.

Again the Ministry in its response wrote of a system "currently being developed for all children's services by the Standards and Information Branch" to "ensure uniformity and completeness of case recording."

That appears to me to be another instance in which the Ministry speaks of matters beyond that of child abuse. It is an approach to "all children's services" which extend far beyond the direct concerns of this Inquiry. It is an ambitious undertaking.

As I recall the testimony relating to the Management Information Service, another ambitious project of the Ministry, that project foundered because it was so ambitious and was frustrated by the seemingly endless reorganization and restructuring of the Ministry. Perhaps less ambitious proposals related to specific and relatively confined concerns would be more effective. If desired a number of these less complex undertakings could be grouped in some way, but there would always be a solid base for each of the components in the event the grouping was not established or maintained.

In a Ministry so subject to change as demonstrated by the testimony upon the Inquiry it would seem only reasonable that each component be dealt with separately lest at some time it be moved within the Ministry or even assigned elsewhere.

The Ministry's response acknowledged that the discrepancies in the reports to the Central Registry of Child Abuse arose, in part, because of

> "the lack of a clear definition of what is considered a reportable situation, and lack of clear guidelines for use of the Registry."

The Ministry had been aware of "these conditions." It did not state the length of time during which it had been so aware. Mrs. Farina's testimony was of no help in fixing that time.

The Ministry in its response said it had "taken measures to correct [these conditions] through its revised legislation." Again I presume that is a reference to Bill 114, later enacted as The Child Welfare Act, 1978.

The Ministry's position was that the new legislation would provide "a legislative base governing abuse reporting as well as the Central Registry." The Ministry relied particularly upon section 47 of Bill 114, which contained a definition of "abuse," and section 51, which related to the Central Registry and its use. The Ministry recognized that section 14 was "general in nature." It said its "guidelines" would be "much more specific in order to give clear direction to the [Children's Aid] Societies."

That latter statement prompts the rhetorical questions "If the definition of abuse remains 'general in nature' why did the Ministry wait until the new legislation was drafted to prepare 'much more specific' guidelines? How much more of a legislative base was the proposed new legislation, as it stood in September 1978, than The Child Welfare Act as it was in 1976?"

It would seem that the guidelines to be issued by the Ministry were to go beyond the statutory definition of abuse. The same could have been done in 1976 or earlier.

The Ministry stressed the difficulty of defining "neglect" and determining when neglect should be reportable to the Central Registry. It spoke of reporting forms "being developed" along with "a complete set of guidelines that make the meaning clear and which will be helpful" to the children's aid societies and others who are required to report to them upon cases of abused children.

Mrs. Farina testified to much the same effect. She said that the Central Registry of Child Abuse as it had been was not "a useful Registry," but the Task Force felt that it could be useful and the Ministry was seeking to accomplish that.

At the time of the Ministry's response to the Garber Report, Bill 114 had received second reading. To that time, in section 44 on first reading and in section 47 on second reading, it defined "abuse" as meaning "a condition of physical harm or neglect or sexual molestation." On third reading the definition in section 47 was amended by replacing the word "neglect" with the words:

> "malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death."

Mrs. Farina in her testimony said there were considerable differences of opinion as to what constitutes "neglect." I infer that the eventual form of the legislation as enacted reflects a resolution of those differences of opinion which Mrs. Farina mentioned.

Bill 114, in section 46 on first reading, section 51 on second reading and section 52 on third reading, contained provisions relating to a register of reports of abuse of children. Substantial amendments were made to these provisions as the Bill proceeded through the legislative process.

The provisions relating to that register as enacted in The Child Welfare Act, 1978 are in section 52. Every children's aid society which receives information concerning the abuse of a child must forthwith report thereon to an employee of the Ministry designated as the Director for the purposes of the section. That Director must maintain a register of such reports. Access to or disclosure of the information in the register is restricted. Use of the register as evidence is restricted. The officers and employees of any children's aid society making or failing to make any such report are protected from civil liability if they acted in good faith.

The Regulations made under The Child Welfare Act, 1978 are contained in Ontario Regulations 388/79 and 389/79 and are supplemented by the Regulations made under The Provincial Courts Act and The Judicature Act.

Part VI of Regulation 388/79 is entitled "Child Abuse." It contains sections 26 to 28, inclusive.

Section 26 defines the information which the Director who maintains the register may furnish to a children's aid society which may inquire under section 8(1) of Regulation 389/79. That latter provision requires any children's aid society which receives information under section 49 of The Child Welfare Act, 1978 to inquire if any person referred to in the information has been previously identified in the register.

Section 27 requires any report, whether initial or supplementary, to the Director maintaining the register to be in a prescribed form. It also enables the Director to extend the time prescribed by section 8 of Regulation 389/79 within which any such report may be made. Section 8 of Reg. 389/79 requires the initial report to be made within 14 days after the children's aid society has verified the information in the manner determined by the Director. If the case is not closed by the children's aid society a supplemental report is required within four months of the making of the initial report, and thereafter annually, on the anniversary of the initial report, until the case is closed. The prescribed forms are comprehensive when compared with the form used during Kim's lifetime.

Section 28 requires that information reported to the register be recorded in a prescribed form and be maintained for a prescribed period of time.

The Regulations made under The Child Welfare Act in force during Kim's lifetime contained no provisions corresponding to Part VI of Regulation 388/79 or section 8 of Regulation 389/79 nor did they prescribe the form of the report to the then Central Registry of Child Abuse. The Child Welfare Act in force in Kim's lifetime contained no provision relating to the Central Registry of Child Abuse.

So that the readers of the report may observe the changes, sections 47, 48, 49 and 52 of The Child Welfare Act, 1978 and Section 26, 27, and 28 of Regulation 388/79 and section 8 of Regulation 389/79 together with the forms thereby prescribed are reproduced in Schedule 2-P to the report. Regulations 388/79 and 389/79 came into force on June 15, 1979, the day on which The Child Welfare Act, 1978 came into force. The form of report to the Central Registry of Child Abuse in use in 1975 is reproduced as part of Schedule 2-R to the Report.

After that above-mentioned recommendation in the Garber Report the Task Force expressed its hope that that recommendation would be implemented within a year. I have not inquired as to whether or not that has been accomplished. My examination of the Statutes of Ontario and the Regulations made thereunder as recently as November 1981 reveals no relevant amendment to The Child Welfare Act, 1978 or Regulations 388/79 and 389/79. It would seem therefor that the hope of the Task Force was not fulfilled. However, the Ministry may have accomplished it in some other form. I did not deem it proper for me to inquire of the Ministry. The Minister may wish to make his own inquiries of the staff to satisfy himself.

The Garber Report then set forth the desire of the Task Force that, upon achievement of that preceding recommendation, a process for the accreditation of children's aid societies be initiated within 3 years, completed within five years for all children's aid societes and followed by reaccreditation at intervals of five years.

That desire was expressed in the next recommendation of the Task Force as follows:

> "That an accreditation process for children's aid societies be initiated by the Ministry of Community and Social Services. Regulation concerning accreditation should be incorporated into The Child Welfare Act."

That recommendation was not acceptable to the Ministry which, in its response, as elaborated upon by Mrs. Farina in her testimony, expressed its preference for other procedures.

The Ministry's response and Mrs. Farina spoke of the Task Force's concern about the quality or level of service provided by children's aid societies.

The Ministry's response mentioned the Task Force's concern that the quality of service varied across the province. It went on to state that the recommendation was intended to assure a uniformity of standards of service. It said that the Task Force desired "a more sharply defined and visible system of public accountability on the part of the [children's aid] societies." I did not notice any such comment in the Garber Report or Mrs. Farina's testimony, unless one were to infer it from the many references to the desired participation of other professions and institutions with the children's aid societies.

The Ministry in its response acknowledged "the need for a system to assure that standards of service are met." The Ministry mentioned the concern of some boards of directors of children's aid societies that they were unable to know the levels of service in their local societies and how those levels compared with the levels of other societies. Mrs. Farina mentioned that, but added that some local directors of the societies, the most senior staff persons, expressed similar concerns. She said it was difficult for such boards of directors and local directors to effect the necessary monitoring and they felt a system of accreditation would assist them.

Systems of accreditation exist in relation to other institutions, such as hospitals. In her testimony upon the Inquiry, Mrs. Wood, a member of the Board of Directors of the Children's Aid Society, spoke of a somewhat similar review of the Society which might have been conducted. That review would not have been to achieve accreditation in the sense of its being a prerequisite to continued operation, but it would have given the Board of Directors, Mr. Lovatt and the entire staff and membership of the Society some indication of the strengths and weaknesses of the Society.

The Ministry and Mrs. Farina acknowledged the validity of the concern of the local boards of directors in respect of standards of service and the performance of the local children's aid societies. They felt however that a system of accreditation was not the best solution. They argued that the accreditation reviews were "periodic spot checks" and did not take "responsibility for the overall development of the agency." They spoke of more bureaucracy and more cost.

Mrs. Farina described the potential costs as being "enormous," but spoke only of $150,000 annually "only for the study part of it." She did not explain what else would be involved. On the basis of fifty children's aid societies that is only $3,000 for each, which seems to be a small sum in relation to the overall budgets of the societies.

The Ministry and Mrs. Farina recommended a system of "operational reviews and other kinds of checking and monitoring" as being more effective than accreditation because it helps each society to monitor itself and provides a monitoring by the Ministry.

Self monitoring was seen as enabling each society to consider local community factors and services affecting its operations.

The Ministry's response said these operational reviews would be

> "considerably more meaningful in that inherent in them are the implementation aspects of standard setting including programs of staff development, and assistance to the societies where this is necessary."

Mrs. Farina made similar comments in her testimony.

I am unable to accept the validity of that response and those comments. The responsibility and duty of the Ministry under The Child Welfare Act to "advise and supervise" and to "inspect" the local societies are not increased because the reviews are conducted by the Ministry; nor are they diminished because the reviews are part of an accreditation process. No matter how any deficiency within a local society is discovered the Ministry would still have its statutory duty which, in my view, encompasses "assistance to the Societies where this is necessary" to use the words of the Ministry's response.

The Ministry's response spoke of standards being developed in stages and that the societies would be helped to examine their practices in relation to those standards and to maintain continuous self assessment.

The Ministry and Mrs. Farina spoke of the local boards of directors of the societies being aware of the results of operational and other reviews.

Again the validity of that as a basis for rejecting a system of accreditation escapes me. The Ministry remains bound to help societies. The local board of directors will be aware of the results of the accreditation review and the Ministry, as part of its duty to advise, remains bound to inform the local board of whatever comes to the attention of the Ministry as a result of any review of the local society it may care to make.

It would seem to me that all of the Ministry's reaction to the Task Force's recommendations that "an accreditation process" be initiated is really an argument of semantics. The operational reviews which the Ministry proposed, if appropriately directed and regulated, and if conducted by sufficient personnel qualified in all aspects of the operation and administration of children's aid societies, would be as effective as a process of accreditation. Whether it be to determine whether a society may be accredited or to determine whether the society is adequately fulfilling its duties and obligations, standards will have to be set and the performance of the society and its personnel will have to be measured against those standards.

Similarly, even if the society is to monitor or assess itself, standards will have to be set and published. Without standards the local society has no way of knowing how well or how poorly it has performed. Indeed, without standards no one has that ability.

The sixth recommendation of the Task Force in the Garber Report was:

> "That the guidelines include procedures for rotation out of child abuse caseloads, staff assignments, and special leave for study."

The Task Force wrote that supervisors should be assigned some cases of child abuse so as to "remain in touch with the experiences of front line services." It wrote of "high burnout" of workers assigned exclusively to cases of child abuse and gross neglect. Such cases are the most difficult and draining.

The Ministry's response and Mrs. Farina's testimony support the Task Force's opinion, but cite the lack of funds to implement it fully. Mrs. Farina spoke of the Ministry being unable to "[send] people away for extended periods of time," but recommending short leaves for study.

The Ministry said "plans for such rotation will be included in the standards being developed."

The Ministry's response to this sixth recommendation concluded with another of the statements of the type I have observed elsewhere. I do not doubt the good intentions of the Ministry when it issues such a statement, but I do doubt the ability of anyone in or out of the Ministry to say, with precision and certainty what it means or what it was intended to mean. The author of the statement may interpret it one way; I or any other person reading it may give it a quite different meaning.

The statement is short and is as follows:

> "The Ministry has made a committment (sic) to staff training and development programs as a means providing stimulation to staff."

It simply begs any number of questions. When and how was the commitment made? To whom was it made? When and how will it be implemented? Has the Ministry the ability to fulfill its commitment? What will it require of others including the local children's aid societies?

The seventh recommendation in the Garber Report was

> "That the Ministry prepare guidelines for the participation of multi-disciplinary teams, police, physicians, legal counsel, and educators."

That was followed by a section entitled "Multi-disciplinary coordination" which contained four more recommendations. There is a relationship among the give recommendations.

The Task Force wrote of the many persons in many professions or callings who might be the first to observe a particular case of child abuse and to report it to a children's aid society which must then protect or assist the child. They wrote of the many roots of the problem and the inability of any one agency to provide all of the services which may be required. Thus the children's aid society must draw upon other resources in the community for assistance. Mrs. Farina said this was particularly so in relation to the decisions which must be made in each case.

Multi-disciplinary child abuse teams had worked well in other jurisdictions and in those communities in Ontario in which they existed. Less than one third of the children's aid societies in Ontario participated in such teams.

The Task Force concluded its introductory comments with the sentence,

> "We support many types of multi-disciplinary consultation and cooperation in all localities, urging fiscal and consultation supports."

The Ministry's response to the seventh recommendation in the Garber Report was positive. It wrote with some specific detail of steps taken by the Child Abuse Programme to further a multi-disciplinary approach to the problem of child abuse. Mrs. Farina said that had been proceeding for "about two years" prior to the Ministry's response.

However the Ministry stressed that inter-disciplinary teams function differently in various communities. It felt it would be almost impossible to develop guidelines for participation in the operations of such teams, but it did recognize that guidelines outlining the roles of such teams would be helpful. The Child Abuse Programme has "developed a paper which outlines the way in which teams are used." Unfortunately the paragraph concluded with the promise only to "get it to you [children's aid societies] as soon as possible."

The Child Abuse Programme offered its staff for consultation.

There is an Inter-Ministerial Committee on Children's Services to serve as "the mechanism for handling child abuse matters that concern more than one Ministry."

The eighth recommendation in the Garber Report was:

> "That Children's Aid Societies be required to initiate the formation of multi-disciplinary teams locally. The functions of these teams should be as follows:

- to provide consultation, coordination and cooperation, and community planning

- to assist in decision-making, not necessarily as a group but as informed individuals

- to be involved in immediate decision-making and critical long-term decision-making.

That recommendation was related to the preceding one.

The Ministry's response, as it was to the preceding recommendation, was sympathetic and supportive. It agreed that such an approach was desirable, but it pointed out that problems might arise. Neither the Ministry nor the children's aid societies have authority to force others to participate in the operations of such teams. The Ministry offered its support and assistance to any local effort to establish such a team including, if necessary, approaches, through the Inter-Ministerial Committee on Children's Services, to other Ministries of the Government which might have jurisdiction or authority in certain fields.

Mrs. Farina noted that the community child abuse team established in Sarnia was one of the first in Ontario.

The ninth recommendation of the Task Force was:

> "That although multi-disciplinary teams should assist the CAS, the CAS must continue to assume the ultimate responsibility for child protection."

That recommendation is related to the preceding two recommendations.

The Ministry's response was favourable. It regarded the recommendation as recognizing that such a multi-disciplinary team can lose its effectiveness if ultimate responsibility for child protection is not clearly established. The Ministry said the responsibility of children's aid societies for child protection is established in The Child Welfare Act and is stressed in the Ministry's materials on staff training and development programmes and multi-disciplinary teams and in the guidelines for the handling of child abuse cases.

Mrs. Farina elaborated upon the Ministry's response to note that such inter-disciplinary teams are advisory only.

The tenth recommendation of the Task Force was an extension or refinement of those which immediately preceded it. It was preceded by the caption "The CAS and the Police" under which the Task Force expressed some opinions and comments.

The Task Force wrote that both the children's aid societies and the police have a mandate to protect children. Each has skills which complement the other's skills. The police have investigatory skills. The children's aid societies have assessment and treatment skills.

Investigation of abuse situations was said, by the Task Force, to be "problematic" for the children's aid society. I am uncertain of the sense in which the Task Force used the word "problematic," but I infer it was intended to convey the belief of the Task Force that problems might arise for a children's aid society if it investigated abuse situations.

The Garber Report set forth a number of examples of such problems as follows:

> "° there is frequent reluctance on the part of the police and the Crown Attorney to become involved, unless they are certain they can develop proof for a court case
>
> ° collection of concrete evidence by CAS workers for Court is difficult and time-consuming
>
> ° the CAS lacks resources and competence to investigate and assess situations as thoroughly as it would like

> - there exists a lack of consistent Ministry guidelines for abuse investigation and disposition
>
> - there is a lack of knowledge on the part of police as to their role and the scope of their involvement
>
> - there is often confusion of function when the CAS worker is protecting the child and helping the family on the one hand, and investigating the family for causative behaviour on the other."

The Task Force felt that such problems arose "mainly from mutual inability of the CAS and police to understand their respective roles and responsibilities."

The Task Force felt that many instances of neglect and mild abuse can be handled by social workers without police intervention. However procedures for full utilization of police skills should be established. Police assistance should not be sought only in crisis situations. Regular prosecution process should follow if there is strong evidence of abuse or neglect.

The Task Force did not specifically consider any of the events of or about Kim's case. However, in this area of the Garber Report they wrote:

> "The task force was concerned about the role and responsibility of coroners when there has been a child abuse death. Where there is a high index of suspicion it was recommended that an inquest should be held. Some members of the task force believed inquests should be held in all child abuse deaths if the case is not otherwise dealt with by a Court. The protection of other children in a family in which a child abuse death has occurred is the professional responsibility of a coroner and the legal responsibility of the local CAS."

That paragraph is a strong reminder of the events described in Chapter XI of this Report, "Postlude to Kim's death on August 11, 1976."

The tenth recommendation in the Garber Report was,

> "That joint police and CAS participation in investigative procedures be explored more fully."

The Ministry's response was an expression of its agreement with the recommendation and of its understanding of the dilemma for the children's aid society worker who must investigate the allegation of child abuse and concurrently establish a relationship with the family which will be conducive to future work. However the Ministry also suggested some problems might be met. It felt that successful implementation of the recommendation would depend upon the local situation. Mrs. Farina added that personalities are factors in the establishment and maintenance of co-operation. The Ministry offered support and consultation and, if necessary, referral to any other appropriate Ministry.

It stated that the guidelines on handling cases of child abuse contain a section on the involvement of police which might form the basis for local discussion. I have read that section in the copy of the guidelines prepared in 1976 and produced upon the Inquiry. That section is reproduced as Schedule 3-A to this Report. It is rather terse. As might be expected by reason of its source and the persons for whom it was primarily intended, it is written from the perspective of the children's aid societies. It does not indicate what each might expect from the other and that the hope is for a partnership approach to child abuse matters.

In light of the comments upon the dilemma of the social worker who seeks to establish a relationship to enable future work with the family, the paragraph reminding the reader of the possiblity that charges may be laid if the police are involved might almost be construed to be a caution against seeking the involvement of the police.

The Ministry's response and Mrs. Farina each mentioned some pilot projects undertaken in some communities whereby the children's aid societies and police are routinely involved jointly in the initial stage. The Ministry proposed to advise the children's aid societies of the results of such projects.

It is of interest to note that, apparently almost instinctively, the Sarnia Police Force requested the assistance of the Society in June, 1975 and recognized the statutory obligation cast upon the Society. Unfortunately the Sarnia Police Force did not fully appreciate its own responsibilities at the time. The establishment of a routine procedure as suggested by the Task Force may have helped Kim in June, 1975 and thereafter.

Another specific time when a routine procedure of co-operation between the Society and the Sarnia Police Force might have helped Kim was in February, 1976 when Police Constable Wyville expressed his concern for Kim's safety if she were returned to her parents. It may be that that was an instance of what Mrs. Farina meant when she spoke of the effect of the personalities of the participants in any venture upon the success of the venture.

The next caption in the Garber Report is "The CAS and the Medical Profession".

In the paragraphs preceding the next recommendation the Task Force writes of the important role that the medical profession can play in the detection and investigation of situations of possible danger to children and of cases of abuse, neglect or sexual molestation. Members of the medical profession would be expected to join the interdisciplinary child abuse team.

The Garber Report contains suggestions as to particular steps which may and should be taken to obtain the support and confidence of the medical profession, not only physicians, but also nurses, hospital staff and public health bodies.

One such suggestion was that the Ministry seek the direct assistance of the Ministry of Health and the various professional associations to alert members of the medical profession to their responsibilities.

The Task Force's eleventh recommendation was:

> "That hospital accreditation procedures should include standards for reporting child abuse, and for participation on multi-disciplinary child abuse teams."

The Ministry's response to that recommendation was favourable.

Mrs. Farina in her testimony elaborated upon the relevant statements in the Garber Report and the Ministry's responses which emphasized the difficult position in which hospital employees might find themselves. In some instances such employees identified symptoms of child abuse, but were prevented from reporting to a children's aid society or Crown Attorney because of orders or regulations given or imposed by doctors or hospital administrators.

Some of the direct testimony upon the Inquiry verged upon that type of situation. Mrs. Hewitt particularly spoke of the traditional training of nurses to report to doctors and to nursing supervisors and to follow the instructions that may be given by doctors and nursing supervisors. She said nurses relied upon their supervisors and the doctors to do whatever was required. Sister Rita spoke of administrative procedures within the hospital which would authorize only certain employees to report any incident of abuse. Dr. Singh in his report of March 27, 1975 wrote of his suspicion that Kim had been abused and of his fear for her safety. He concluded his comment by writing "...this should, of course, be discussed and kept confidential."

Some of the physicians expressed concern that the ethics of their profession would require them to report only to the physician attending Kim who then would be expected to make any report required by law.

Upon the Inquiry there was no testimony to that effect that anyone was specifically ordered not to report Kim's case or was prevented from reporting it because of the existence of some specific regulation or procedure of the hospital or any professional association or authority.

The Ministry's response, supplemented by Mrs. Farina's testimony, was that Bill 114 contained a revision of section 41 of The Child Welfare Act. At that time the proposed revision was contained in section 47 of the Bill, but it was eventually enacted as section 49 of The Child Welfare Act, 1978.

That revision, compiled with the definition of abuse contained in section 47 and the penalty provided for in section 94 of The Child Welfare Act, 1978, was intended to strengthen the requirement that professional persons report incidents of which they become aware in the course of their duties.

In the same area of its response, the Ministry repeated its statement of support of interdisciplinary teams.

In direct reference to the recommendation that standards for reporting child abuse form a part of the criteria for hospital accreditation, the Ministry had requested the Ministry of Health to explore implementation of the recommendation.

It is interesting to me to note that, while the Ministry in earlier portions of its response opposed the suggestion that children's aid societies be subject to a process of accreditation and deprecated the value of such a process, the Ministry felt accreditation of other publicly funded institutions, hospitals, was not only beneficial but should be expanded to contain factors relating to the involvement of those institutions with children's aid societies.

It would seem to me that the Ministry is inconsistent in its views upon any process of accreditation.

The next two recommendations of the Task Force were set out in the Garber Report under the caption "Legal Consultation and the Courts."

In that section of the Garber Report the Task Force wrote of "the delicate balance" between society's obligation to protect children and the individual parent's rights to raise children. The Task Force concluded that protection of children was paramount although efforts should be made to assist inadequate parents.

The Task Force wrote again of the dual function of a children's aid society as the authority which may remove a child from the home and provide testimony in court which may terminate or diminish parental rights, but which also may have to seek to rehabitate the abusing family in the best interests of the child. Those functions were not necessarily complementary.

The Task Force wrote of concerns expressed to the effect that in contested or adversarial proceedings in court the best interests of the children involved were inadequately represented. They wrote too of children's aid societies not being fairly and fully represented in court proceedings.

The Task Force wrote of dissatisfaction with the courts. Proceedings were time consuming and frustrating because of adjournments. The personnel of children's aid societies encountered difficulties because of lack of investigative skills and lack of ability to prepare properly for court.

The Task Force expressed concern for the child who may be left "in a state of limbo for unacceptably long periods of time" and for "the child [who] remains at risk unnecessarily when the court process is not expeditious."

All of those comments could be made in respect of the proceedings in court in relation to Kim. She was not adequately represented by the Society, the case was not well prepared or presented by the Society, the proceedings were not expeditious, there were many long adjournments, the time of witnesses was wasted when they attended only to learn that the matter was to be adjourned and Kim remained in a state of limbo for months, an unacceptably long time.

The Garber Report contained some comments similar to portions of Dr. Bates' testimony relevant to court proceedings. It wrote of evidentiary problems, particularly in relation to psychiatric and psychological testimony, and the perceived disposition of the courts to require "unequivocal evidence of abuse." It wrote of the adversary system resulting in a perceived slant towards parents' rights. It expressed concern about undue optimism of the Courts in their reliance upon supervisory orders as a means of protecting children.

Accordingly the twelfth and thirteenth recommendations in the Garber Report were:

> "That in all child abuse court proceedings the CAS must be represented by counsel; in all uncontested cases the CAS should have access to legal opinion, in order to fulfill its protection mandate.
>
> Any child who is the subject of a child welfare hearing should be represented by his or her own lawyer, unless this is not recommended by the Court."

The responses of the Ministry to these two recommendations were essentially affirmative although they did contain some divergence of opinion or approach.

Mrs. Farina in her testimony spoke of the twelfth recommendation as being "poorly worded." She and the Ministry interpreted the first clause of the recommendation as being applicable to contested proceedings in child abuse cases. If that were the recommendation, the Ministry would accept and support it. The Ministry would not agree that the children's aid societies must be represented by counsel in all uncontested child abuse cases.

The Ministry accepted the second portion of the recommendation and agreed that the children's aid societies should have access to legal opinion in all uncontested cases of child abuse.

The Ministry's response was that it was preparing a paper setting forth guidelines in relation to representation in court and other legal services. That paper was to be circulated. If any children's aid society were in doubt the Ministry was available for discussion. The Ministry was conducting seminars with the assistance of regional planning groups. It sought to involve children's aid society court workers, police, lawyers and judges. Mrs. Farina said it was hoped to have discussion upon such subjects as investigation, preparation for trial or hearing and presentation of evidence.

Mrs. Farina testified that that paper discussed the various situations which might require legal services of different types and the basis upon which those services might be obtained. It was not a recommendation that every children's aid society have a solicitor on staff.

It was suggested to Mrs. Farina that in 1975 and 1976 the Society encountered a problem in securing funds to engage a solicitor's services. She responded that it may have been perceived as a problem but,

> "[her] understanding is that for legitimate court costs that the Ministry has never questioned use of legal people on child welfare matters."

Mrs. Farina felt the result would be that in all contested cases of child abuse the children's aid societies would be represented by counsel.

The Ministry's further response was that it would request The Law Society of Upper Canada to incorporate in its programme of continuing education a portion designed to familiarize lawyers with the handling of child welfare cases. The Ministry said it was prepared to support attendance at such a course by lawyers on the staff of or retained extensively by children's aid societies. The extent or nature of the support was not indicated.

The Ministry had spoken informally to the Chief Judge of the Provincial Court (Family Division) and had offered to participate in seminars arranged for judges of those Courts.

Mrs. Farina in her testimony commented upon Kim's case. She hoped that out of it seminars would be useful in clarifying for the workers employed by children's aid societies their rights, duties, powers and responsibilities in relation to matters before the Courts.

The Ministry's response to the thirteenth recommendation in the Garber Report was that it had already been acted upon in the revision of The Child Welfare Act. The relevant provisions are found in section 20 of The Child Welfare Act, 1978.

The recommendation was that the child be represented "unless this is not recommended by the court." The legislation reverses the procedure in that it requires the court to determine if a child who is not represented should be represented. If the determination is in the affirmative, the court shall direct that representation be provided for the child.

The approaches of the recommendation and of the legislation are different, but both arrived at the same result.

Mrs. Farina said that the recommendation and legislation arose out of a case in Toronto in respect of which some felt that the child's rights would have received more consideration if the child had had separate representation.

Mrs. Farina was not aware of what provisions had been made or were intended to be made to provide funds for such separate representation. There was no testimony to suggest that any such provisions had been made or considered. That would seem to be an oversight of some substantial significance.

The Garber Report then moved on to a consideration of standards for alternative care of children who have been abused. It spoke of such children being treated adequately for their physical injuries, but less than adequately for other effects of abuse. It spoke of the cycle whereby abused children acquired the potential to become abusing parents.

Dr. Bates testified to a somewhat similar effect when he appeared upon the Inquiry.

The Garber Report spoke of abused children who became difficult to handle and were mistrustful of all adults.

There was some testimony upon the Inquiry that Kim may have become such a child.

The Task Force wanted to ensure that the alternative care provided for abused children would be helpful to them and would not continue the abuse to any emotionally or physically damaged child. Helpful alternative care might reverse the traumatic effects of the abusive environment in which such a child had lived.

The fourteenth recommendation of the Task Force was:

> "That the Ministry of Community and Social Services institute high standards for alternative care of abused children. This can be done by means of the following:
>
> 1. recruiting specially trained persons to provide this care
>
> 2. offering incentives to ensure that good alternative caretakers are properly remunerated for fulfilling this demanding and challenging responsibility
>
> 3. continuous and exacting monitoring of alternative care
>
> 4. requiring continuing education and training of caretakers."

The Ministry's response expressed its sharing of the concerns expressed by the Task Force. It spoke of instances in which children were maltreated by substitute parents.

Mrs. Farina testified that some abused children seem to attract abuse because of their personality characteristics. This seems to be in accord with some of Dr. Bates' testimony as to certain children for various reasons being "high risk kids."

Mrs. Farina believed that such children require specialized and careful handling. If such children are placed in foster homes the foster parents should have received extra and specialized training.

The testimony upon the Inquiry did not express any criticism of Mr. and Mrs. Cecile who were Kim's foster parents for almost half of her lifetime. They were considerate and loving and concerned for Kim's welfare. Kim, at times at least, was not an easy child to handle. She taxed Mr. and Mrs. Cecile, but they persisted with Mrs. Kirby's encouragement. Mr. and Mrs. Cecile impressed me as being the special sort of person of whom Mrs. Farina spoke as being needed to serve as foster parents of abused children.

The Ministry said it was developing standards for foster care and the paper on standards for residential care was to be released in September 1978.

It spoke of planning a training programme for foster parents of abused children.

Chapter XXVII

The Ministry of Correctional Services

The Ministry of Correctional Services, which in this Chapter I shall call "the Ministry," became involved with Kim after Annals Popen, on February 23, 1976, was found guilty of the charge laid under section 40 of The Child Welfare Act. At that time His Honour Judge Nighswander ordered a pre-sentence report for his use upon consideration of the sentence to be imposed.

In section 5 of The Probation Act, as it was in 1975, there were provisions for such an order. Provincial Probation Officers were charged with responsibility for preparation of such reports.

George Brouwer, a Provincial Probation Officer, was assigned responsibility for preparation of the pre-sentence report.

Before preparing the pre-sentence report, Mr. Brouwer saw Annals Popen and Jennifer Popen on February 23, 1976. He spoke with Judge Nighswander on the same day. On March 4, he saw Jennifer Popen in the Popen home. At the same time he spoke briefly with Mrs. Lo of the Society. On March 5, Mr. Brouwer interviewed Mrs. Lo. He also spoke to Douglas Vandenberghe and Judith Vandenberghe, neighbours and friends of the Popen family. Mr. Brouwer's superior officer wrote to Dr. Curtin to arrange for that psychiatrist to interview Annals Popen and to furnish a written report following that interview.

Mr. Brouwer testified that his discussion with Mrs. Lo on March 5, 1976 was not very useful for his purposes as she had not then seen Annals Popen in performance of her duties. She told Mr. Brouwer that she was arranging for Annals Popen and Jennifer Popen to take the Parent Effectiveness Training Course. Mr. Brouwer did not see nor did he ask to see the Society's files relative to Kim's case nor did he seek to speak to anyone else at the Society. Mrs. Lo was unable to give him much information because she had only recently been assigned to the case. She did tell Mr. Brouwer that Annals Popen had been attending Alcoholics Anonymous for about three and one-half months and wanted to have Kim returned to the family home.

Mr. Brouwer's information from Mrs. Lo was that initially everyone at the Society had thought Jennifer Popen had abused Kim. No reason for that suspicion was given to or asked for by Mr. Brouwer. No mention was made to Mr. Brouwer of the supposed chain of assaults by Annals Popen upon Jennifer Popen and then by Jennifer Popen upon Kim. Mr. Brouwer gained the impression that, by reason of Annals Popen's plea and the finding of guilt against him, the thinking within the Society had changed and that from February 23, 1976 it was assumed that Annals Popen had abused Kim.

Mr. Brouwer acknowledged that he prepared the pre-sentence report on the same assumption that Annals Popen, not Jennifer Popen had abused Kim.

Thus Mr. Brouwer, like others, misconstrued the nature of the charge which Annals Popen faced and the significance of his plea thereto. As a result, he approached his task with what is now known to be a misconception.

Mr. Brouwer found Annals Popen to be a very quiet and withdrawn person who permitted Jennifer Popen to answer questions addressed to him. When alone with Mr. Brouwer, Annals Popen was hesitant and appeared to have difficulty in responding to questions. He told Mr. Brouwer he had no memory of having inflicted any injury upon Kim, but accepted what others told him as to his having hit her.

Mr. Brouwer testified that in his interviews with Annals Popen and Jennifer Popen their responses were so vague that he was unable to form any opinion as to which of them abused Kim. It appeared to him that Annals Popen may have, but he was not certain. He felt Annals Popen's drinking was a factor.

In preparing the pre-sentence report, Mr. Brouwer had access to the brief prepared by the

Sarnia Police Force for use by the Crown Attorney upon the trial of the charge laid under The Child Welfare Act. That gave him Kim's relevant medical history including her various periods of hospitalization. He was told by Jennifer Popen that she was responsible for Kim's broken arm in March, 1975, an injury she said Kim had suffered in an accidental fall from her crib.

Annals Popen told Mr. Brouwer he was attending Alcoholics Anonymous, was no longer drinking and, therefore, was certain Kim would not be harmed again. But Mr. Brouwer was still uncertain as to who had caused Kim's injuries.

Mr. Brouwer did not speak to Police Constable Wyville or any other member of the Sarnia Police Force while preparing the pre-sentence report nor did he see the investigation report in the Sarnia Police Force's files. While Mr. Brouwer testified that he thought he had tried to contact Police Constable Wyville by telephone, his memory was such that I am not satisfied that he made any effort to speak with Police Constable Wyville. He did not testify as to having tried to speak with any other police officer.

Mr. Brouwer acknowledged that Police Constable Wyville could have been a source of valuable information for inclusion in the pre-sentence report. In my view Mr. Brouwer should have spoken to Police Constable Wyville or some other police officer familiar with the case. As was revealed by the testimony upon the Inquiry such an interview would have given information or views which Mr. Brouwer did not obtain.

In the pre-sentence report, Mr. Brouwer lists his sources of information for the preparation of that report as:

> "The offender; Mrs. Jennifer Popen, his wife; Mr. and Mrs. Douglas Vandenberghe, (sic) landlord and neighbour; Mrs. Shirley Lowe, (sic) Caseworker, Children's Aid Society; Dr. J.J. Curtin; Probation Office Files."

Annals Popen's prior experience with the Ministry and its Probation Service involved a minor theft committed in 1964. Thus it would not seem that files in the office of the Probation Services would be helpful to Mr. Brouwer in relation to the offence in 1975. The only factor which appeared to be common to both offences was the reference to the consumption of alcohol.

Notwithstanding that Mr. Brouwer himself acknowledged that Mrs. Lo was not the source of much useful information, he did not speak with Mr. Carter, whom he knew had recently been replaced by Mrs. Lo, or with anyone else at the Society.

Thus the only useful impartial information for the pre-sentence report came from Dr. Curtin's report.

The balance of Mr. Brouwer's information came from Annals Popen and Jennifer Popen themselves and from their friends, Douglas and Judith Vanderberghe. Even Mr. Brouwer expressed doubt of the reliability of information from Annals Popen and Jennifer Popen.

By reason of Mr. Brouwer's failure to speak with a police officer and with someone of the Society more familiar than Mrs. Lo with the case, the sufficiency and impartiality and, thus, the value of the pre-sentence report is suspect.

The pre-sentence report is dated March 29, 1976, the day on which Annals Popen was sentenced.

The pre-sentence report sets forth much of what I have written in this Chapter, but it contains no mention of the initial suspicion as to Jennifer Popen's involvement with Kim's injuries and the uncertainty which lingered in Mr. Brouwer's mind as to who might have caused those injuries.

In my view, the pre-sentence report, by reason of the matters which I have mentioned in the immediately preceding paragraphs, was neither complete nor accurate. It did not really alert Judge Nighswander to the suspicion that members of the Society's personnel involved with the case had had as to Jennifer Popen's possible connection with Kim's injuries. It did not tell Judge Nighswander of the shallow basis for Mrs. Lo's expressed optimism. It did not tell Judge Nighswander of Mr. Brouwer's lingering doubts and confusion after talking with Annals Popen and Jennifer Popen. It made no comment on Dr. Curtin's report.

Thus Judge Nighswander was deprived of information which might have led him to impose other conditions upon Annals Popen's term of probation or to consider some further action with reference to the order he had made placing Kim in the care of the Society.

Upon the Inquiry, Mr. Brouwer was asked about the absence from the pre-sentence report of any expression of his doubt or confusion as to who had caused Kim's injuries. His response indicated that he felt the final paragraph of the pre-sentence report expressed that doubt. That paragraph reads as follows:

> "It is difficult to determine whether the offender's problems are due only to his drinking, or whether there are other underlying causes. If his problems are due to alcohol alone, then it would seem that his abstaining from alcohol would minimize a recurrence of this type of offence. This offender could well benefit from a period of supervision as an avenue of directing him into continued involvement with the Alcoholics Anonymous and family counselling."

With all respect to Mr. Brouwer that paragraph does not really indicate that he entertained any doubt as to Annals Popen's responsibility for Kim's injuries. It indicates doubt only as to what led Annals Popen to injure Kim and doubt as to whether alcohol alone was the source of the problem.

From the testimony upon the Inquiry, I am not clear as to what led Mr. Brouwer's superior officer to contact Dr. Curtin. Nothing in the transcript of the proceedings in Court on Feburary 23, 1976 or even on February 25, 1976 refers to any psychiatric assessment of Annals Popen or to Dr. Curtin's prior interview with Jennifer Popen. In any event, if it was on their own initiative, the staff of the Ministry of Correctional Services are to be commended for arranging for that assessment.

But, having received Dr. Curtin's report, the Ministry's personnel appear to have failed to recognize its significance. They did not pursue what I take to be Dr. Curtin's suggestion that further objective inquiries be made or psychological testing be conducted. Mr. Brouwer did not specifically draw that comment to Judge Nighswander's attention.

Mrs. Maughan, in her written report upon her first visit with Annals Popen and Jennifer Popen on June 20, 1976, did express a comment not unlike that of Dr. Curtin. At that time she seemed to grasp the significance of what she mentioned as an indication that perhaps Annals Popen and Jennifer Popen were not reliable sources of information. But nothing was done by the Ministry's staff to pursue or resolve Mrs. Maughan's concerns.

Later, in July, Mrs. Maughan seemed to have permitted herself to express sympathetic understanding to Jennifer Popen based only on what Jennifer Popen had told her. Still later in August, Mrs. Maughan determined she should check upon the accuracy of what Jennifer Popen had told her, but at the same time she seemed to be prepared to accept Jennifer Popen's explanation as to Kim's sore lip.

All of this indicates Mrs. Maughan's interest and her perception of a possible basis for doubt as to the real conditions in the Popen home. But nothing was done by the Ministry's staff to assist Mrs. Maughan in her quandary.

I express a corresponding criticism of the Ministry's staff for failing specifically to advise the Society of the existence of Dr. Curtin's report which, in effect, contained an assessment of both Annals Popen and Jennifer Popen. In this area of criticism I am less critical of the personnel of the Ministry than I am of the personnel of the Society for not taking the initiative to inquire about and to obtain a copy of the pre-sentence report and thus a copy of Dr. Curtin's report.

Upon Annals Popen's having been sentenced to a period of probation upon certain terms on March 29, 1976, Mr. Brouwer was assigned to supervise his probation. Mr. Brouwer set about that supervision by seeing Annals Popen in the office of the Probation Services on March 29, April 21, May 21 and June 18, 1976.

That degree of supervision would appear to have been adequate in the circumstances as Mr. Brouwer understood them to be. Kim was in the care of the Society and in a foster home. But there was no substantial evidence as to what, if anything, was accomplished at those meetings apart from Annals Popen appearing as required and telling Mr. Brouwer of various things. He spoke of his activities and of his love for Kim and his desire to have her returned to his home. He spoke particularly of his abstention from alcohol and his attendance at Alcoholics Anonymous and the Parent Effectiveness Training Course. There was no evidence that Mr. Brouwer directed Annals Popen into any area of activity, study, treatment or counselling. Mr. Brouwer relied really on what Annals Popen had selected on his own, Alcoholics Anonymous, with the assistance of Mr. Vandenberghe, and on what the Society had selected for him, the Parent Effectiveness Training Course. Mr. Brouwer seemed to think that Annals Popen's involvement with those "agencies," to use his term, was sufficient when combined with the monthly visits to his office.

Apart from evidence of his call to Mrs. Lo just prior to June 18, 1976 there was no evidence to indicate that Mr. Brouwer made any objective inquiries about Annals Popen's achievements in either the Parent Effectiveness Training Course or Alcoholics Anonymous. The evidence does not indicate that anyone at the Ministry made any such inquiries even after Mrs. Maughan, in her report upon her June 20, 1976 meeting with Annals Popen and Jennifer Popen, wrote:

> "I got the impression that they did not absorb the full content of the course as they did not seem to understand some of the very basic points I mentioned."

In none of these meetings did Annals Popen deny that he had injured Kim; nor did he suggest that Jennifer Popen may have injured Kim. From what he was told by Annals Popen, Jennifer Popen and Mr. Vanderburghe, Mr. Brouwer felt that Annals Popen was complying with the terms of the probation order in that he was not drinking and was attending Alcoholics Anonymous regularly and was responding quite well.

At some time shortly prior to June 18, 1976, Mr. Brouwer telephoned Mrs. Lo to ask how Annals Popen and Jennifer Popen were progressing in the Parent Effectiveness Training Course. Only then did he learn that Kim had recently been returned to her home. Mrs. Lo told him that the Parent Effectiveness Training Course was completed or virtually completed and that the Society would be decreasing its involvement with the family, but not necessarily the frequency of its visits to the Popen home.

Mr. Brouwer's acquisition of that information was perhaps fortuitous. He obtained it only because of his own initiative, not because of any initiative by Mrs. Lo or anyone else at the Society.

That telephone call to Mrs. Lo was made by Mr. Brouwer to obtain information rather than to give information to the Society. It was an appropriate act in performance of his duty.

Mr. Brouwer reacted positively to his receipt of that information. He felt the circumstances surrounding his supervision of Annals Popen's term of probation had been altered and were to be altered even more by decisions and actions of the Society. Kim had been returned to her parents' home and to their personal care. The Society was going to reduce its involvement. So far as he knew no other social agency had an ongoing involvement with Kim's family.

Mr. Brouwer's response to that information from Mrs. Lo was to decide that Annals Popen's monthly visits to his office would no longer provide appropriate supervision of his probation. He wanted to ensure that someone continued to visit the Popen home so as to provide some opportunity to see that Kim was not injured again.

Mr. Brouwer regarded protection of Kim as an adjunct of his supervision of Annals Popen's term of probation. I think he was correct in that opinion. One of the conditions in the probation order governing Annals Popen's term of probation was that he keep the peace and be of good behaviour. Any abuse of Kim by Annals Popen or any failure of Annals Popen to protect her would constitute a breach of that provision. The possibility of a recurrence of the offence surely must have been seen by Mr. Brouwer.

Further, by reason of the application of provisions of The Probation Act, The Interpretation Act and the Criminal Code, Mr. Brouwer, as a Provincial Probation Officer, in performance and exercise of his duties and powers in supervising Annals Popen's term of probation, was a provincial police constable and was deemed to be a peace officer. Thus he had the duties and powers of any constable to ensure Kim's care and her removal to a place of safety pursuant to section 21 of The Child Welfare Act if he properly believed her to be a child in need of protection within the terms of that statute.

Mrs. Maughan, as a volunteer, was not affected by those statutory provisions. She was not a provincial police constable. But she was, in a sense, an extension of Mr. Brouwer and her reports to him upon her observations in and about the Popen home would be of assistance to him in performing his duties. Mr. Brouwer acknowledged his reliance upon Mrs. Maughan and his responsibility, as her supervisor, for her actions.

I have sought to ascertain the authority for the engagement of volunteers to assist provincial probation officers during the years of Kim's life. The Probation Act as it then was and the Regulations made thereunder are silent upon the subject. The Probation Act was repealed by the Ministry of Correctional Services Act, 1978.

Section 9 of The Ministry of Correctional Services Act, 1978 requires that every person providing volunteer services to the Ministry shall serve under the direction of an employee of the Ministry. That is the only reference to volunteer probation workers which I was able to find in any statute or regulation.

Any such consideration was of little interest to the Inquiry in part because of my high regard for Mrs. Maughan and her performance of tasks assigned to her by Mr. Brouwer.

Upon the basis of a quite limited examination of statutes and regulations without delving into other documents or procedures which might have authorized the Ministry to accept Mrs. Maughan's services as a volunteer probation worker, it would seem that, at least until 1978, there was no statutory authority therefor.

Section 9 of the legislation enacted in 1978 seems tacitly to accept that volunteers may provide service to the Ministry, but even it does not expressly authorize the practice.

In the event that there was not, and perhaps is not even yet, sufficient authority for the use of volunteer probation workers, Mrs. Maughan and others may have been or may be exposed to liability which she and they have not contemplated.

To accomplish Kim's protection, Mr. Brouwer assigned Mrs. Maughan to provide direct supervision of Annals Popen's probation subject to his direction and advice. He felt his other duties would prevent him from visiting the Popen home as often as he hoped Mrs. Maughan would be able to visit. Quite wisely he felt that visits to the Popen home would be necessary.

Mr. Brouwer stated in his testimony that while he was a probation officer of some experience this was his first involvement in a probation arising from an incident of child abuse. He assigned duties to Mrs. Maughan. Mrs. Maughan had recently joined the staff of the Ministry as an unpaid volunteer. This was her first assignment as a volunteer and her first direct involvement with child abuse. During Kim's life Mrs. Maughan had no other assignment as a volunteer.

Mrs. Maughan impressed me very favourably. She is dedicated, sincere, able, articulate and interested in the well-being of her community.

While I have that high opinion of Mrs. Maughan it is unfortunate that she, a volunteer, was assigned such difficult duties in a case such as this.

Mrs. Maughan did receive a course of training as a volunteer. I am sure she excelled in that course. There was no testimony to indicate that the course contained any instruction specifically directed to management of cases involving child abuse and the problems, intricacies and subtleties peculiar to that type of case.

That is not to say that Mr. Brouwer had any greater training or ability to supervise Annals Popen's probation. He had no experience with cases involving child abuse and there was no evidence that he had received any training therefor.

I do not believe that the staff of the Ministry involved in Kim's case, even peripherally as they were, fully appreciated the serious nature of the case and its implications and the importance of their role in protecting Kim.

In performance of her duties, Mrs. Maughan had ongoing contact with Annals Popen and Jennifer Popen, particularly by visits to their home. In keeping with her instructions she prepared and delivered to Mr. Brouwer at the end of each month a written report upon her activity during that month.

Mrs. Maughan received her instructions from Mr. Brouwer on or about June 18, 1976. She read the file on Annals Popen. It contained the pre-sentence report and the probation order. She felt Mr. Brouwer had given her much of the information which was in the brief for the Crown Attorney prepared by the Sarnia Police Force, but she did not recall having seen that brief or the Investigation Report of the Sarnia Police Force. She did not have or seek access to the Society's files.

Mrs. Maughan testified that, notwithstanding what Mr. Brouwer had told her of his understanding of the case and notwithstanding the contents of the file in the office of the Probation Services, she at once had some instinctive doubt that Annals Popen had caused Kim's injuries. This seemed to be based on her feeling, as a mother, that the mother of a child abused by the child's father would not have acted as Jennifer Popen had acted following Kim's various injuries. She felt Jennifer Popen had not taken the steps to protect Kim that a mother would be expected to take if the father were abusing the child.

Mrs. Maughan mentioned that doubt to Mr. Brouwer and he told her of the initial suspicion, which existed at least before Annals Popen's plea, that Jennifer Popen had injured Kim.

For the purposes of her supervision of Annals Popen's probation, Mrs. Maughan accepted as fact that Annals Popen had injured Kim. She felt that if Annals Popen had not injured Kim someone involved in the case long before her entry upon it would have discovered the truth. In the circumstances that was a reasonable presumption, but like almost everyone involved with the case, Mrs. Maughan thereby misconstrued the nature of the offence of which Annals Popen had been found guilty. Thus her thoughts were directed along a wrong course.

Mrs. Maughan first met Annals Popen, Jennifer Popen and Kim in their home on June 20, 1976. It was an uneventful introductory meeting. After an initial sense of apprehension was relieved there was no indication of any problem in the Popen home. Annals Popen was not drinking. He and Jennifer Popen had attended all but "a couple" of the sessions of the Parent Effectiveness Training Course. Mrs. Maughan felt they had not fully absorbed or understood that Course. They agreed to Mrs. Maughan visiting their home on a bi-weekly basis.

The situation in the home was such that Mrs. Maughan concluded her monthly report to Mr. Brouwer at the end of June, 1976 as follows:

> "According to both Mr. and Mrs. P. the situation is so devoid of problems as to seem a little unrealistic. They are expecting their second child in early July

> and hopefully this will present an opportunity to visit Mrs. P. in an unprofessional capacity and possibly get to know them a little more intimately."

The first sentence, which is similar to Dr. Curtin's comment in his report, indicates that Mrs. Maughan had some doubt that Annals Popen and Jennifer Popen were being entirely frank with her. Mrs. Maughan acknowledged that in her testimony upon the Inquiry.

There is no evidence to suggest that, upon receipt of that report from Mrs. Maughan or during any oral report by Mrs. Maughan to him, Mr. Brouwer instructed Mrs. Maughan to take any particular action to try to resolve such doubt or to achieve any particular goal in the supervision of Annals Popen's term of probation.

Mrs. Maughan then continued her visits to the Popen home and her oral and written reports to Mr. Brouwer. Neither she nor Mr. Brouwer contacted the Society to express any of the doubt that Mrs. Maughan had as to the true situation in that home or to give any information to the Society as to Mrs. Maughan's observations of the Popen family and their home.

On July 26, 1976, Mr. Brouwer did speak with Mrs. Lo when she telephoned him to advise him that the Society's involvement in the case would cease. Mrs. Lo indicated that she had some concern as to the truthfulness of Annals Popen and Jennifer Popen in her dealings with them. Mr. Brouwer then read to Mrs. Lo portions of Mrs. Maughan's written report for June. I presume that in the context of their converstion he would have read to Mrs. Lo, Mrs. Maughan's expression of doubt in the paragraph of her written report which I have quoted above.

One might be tempted to be critical of Mr. Brouwer and Mrs. Maughan for not having called the Society to advise them of Mrs. Maughan's concerns. It would seem however, in the present instance, that any such call would not have given any new information to the Society and thus would not have made any difference to the Society's management of Kim's case. Mrs. Lo already was suspicious as to the truthfulness of Jennifer Popen and Annals Popen. Any call from Mr. Brouwer or Mrs. Maughan would only have revealed that Mrs. Maughan shared Mrs. Lo's suspicion. But it may have buttressed Mrs. Lo's suspicions and so encouraged Mrs. Lo to express them and seek to persuade Mrs. Harvey, her superior at the Society, that the approach to and management of the case by the Society should be varied.

In any event during the only call from the Society to the Ministry, Mr. Brouwer gave Mrs. Lo complete co-operation and disclosure of the contents of the Ministry's file. By that time the Society itself had made an important decision, the decision to seek an order enabling the Society to continue to supervise Kim's care and well-being in her own home.

I am aware that there was an interval of about five weeks between Mrs. Maughan's visit to the Popen home on June 20, 1976 and Mr. Brouwer's conversation with Mrs. Lo on July 26, 1976. I am aware too that time can be very material in the investigation and management of cases of child abuse. I do not think that in the circumstances the absence of communication by the Ministry's personnel to the Society during the period from June 20, 1976 to July 26, 1976 was material to the Society's management of Kim's case. There was no testimony to lead me to believe that, even if Mr. Brouwer or Mrs. Maughan had telephoned the Society on June 20, 1976 to inform them of Mrs. Maughan's feelings, the Society would have managed Kim's case in any way differently.

Therefore I am not critical of the staff of the Ministry for not having immediately called the Society when Mrs. Maughan had some misgiving as to the true state of affairs on June 20, 1976.

As Mrs. Maughan continued her visits to the Popen home she displayed a real interest in the well-being of the family and Kim. She saw no sign of injury to Kim which was significant to her.

Mrs. Maughan's written report for July describes her feelings after her visit to the Popen home on July 18, 1976. I have set forth in Chapter IX an extensive excerpt from that report. It shows that Jennifer Popen was expressing serious criticism of Mrs. Lo and that Mrs. Maughan was sympathetic to

Jennifer Popen's professed feeling of having been humiliated.

Mrs. Maughan's testimony upon the Inquiry was that during her visit to the Popen home on August 8, 1976, Jennifer Popen continued the criticism of Mrs. Lo; so, Mrs. Maughan decided she would contact Mrs. Lo about it. As events developed, Mrs. Maughan did not speak to Mrs. Lo prior to Kim's death.

It is unfortunate that Mrs. Maughan had not earlier made that decision to speak with Mrs. Lo. Had she done so and had she spoken to Mrs. Lo and had there been a full exchange of information, each of them would have been aware that Jennifer Popen was criticizing each of them separately. Then the nature of Jennifer Popen's strategy or tactic might have been recognized. That recognition might have led to some significant change in the management of Kim's case by the Society.

Thus I express criticism of Mrs. Maughan and of Mr. Brouwer and their superiors within the Ministry. I express that criticism because there was no established procedure for Mrs. Maughan or anyone to advise the Society of any information obtained by Mrs. Maughan or any feeling or suspicion harboured by her.

The absence of any such procedure should not have prevented Mrs. Maughan from contacting Mrs. Lo. I am confident she would have done so after August 8, 1976. Other things intervened. Time, so important in this type of case, ran out.

I express that criticism in full awareness of the provisions of The Probation Act as it was at all relevant times. Portions of that statute are set forth in Schedule 2-N to the Report.

The staff of the Ministry fulfilled the letter of their statutory obligations in connection with the supervision of Annals Popen's probation. They appear to have ensured that Annals Popen complied with the terms set forth in the probation order. Subject to the result of his trial upon the charge of manslaughter laid after Kim's death, it would seem that Annals Popen kept the peace and was of good behaviour so far as the staff of the Ministry was aware. He reported to Mr. Brouwer as required. He met Mrs. Maughan in his home as required. So far as they were aware he was abstaining from drinking alcoholic beverages and he was attending Alcoholics Anonymous which might generally, if perhaps not technically, be regarded as taking treatment for his alcoholism. Even as late as August 8, 1976, three days before Kim's death, Mrs. Maughan, although deliberately observant of Kim's appearance and behaviour, had not seen any indication of injury to Kim sufficient to be significant to her as indicating that Kim had suffered renewed abuse. But they failed to perform adequately what Mr. Brouwer properly recognized as an adjunct thereto, namely the protection of Kim from further abuse.

In performance of that supplement to their assigned role they should have taken the initiative to ensure that the Society was made aware of Dr. Curtin's report and the reservations expressed in it. They should have advised the Society of their own suspicions as to the true situation within the Popen family. They should have advised the Society of Jennifer Popen's criticism of Mrs. Lo's performance of her duties.

In my view the Ministry's staff should have done all of that even though the primary responsibility lay upon the Society.

In my opinion Mrs. Maughan's failure to advise Mrs. Lo of Jennifer Popen's criticism of Mrs. Lo's conduct had a great potential for harm particularly when it was coupled with Mrs. Maughan's sympathetic reception of that criticism. There is no evidence that it did, but it could very well have undermined Mrs. Lo's best efforts. On the surface at least it would seem to give the appearance that the two institutions or agencies represented by Mrs. Maughan and Mrs. Lo were at cross purposes. That sense of difference of opinion or approach as it were between the two institutions would make it difficult for Mrs. Lo to establish a strong position of authority and supervision.

I must of course note that Mrs. Lo is deserving of criticism in the same connection. She listened to Jennifer Popen's criticism of Mrs. Maughan and did not advise the Ministry or

Mrs. Maughan of that criticism. Mrs. Lo's testimony did not indicate how she reacted in Jennifer Popen's presence to that criticism of Mrs. Maughan.

I am satisfied that Mrs. Maughan and Mrs. Lo were trying, each in her own way, to establish some sort of trust or rapport with Kim's parents. That being so, each should have recognized how important was any criticism by Jennifer Popen of either of them and should have advised the other promptly upon hearing any such criticism.

While I voice this criticism of Mrs. Maughan, Mr. Brouwer and the Ministry they serve, I temper it. In the circumstances of their brief and peripheral involvement in Kim's case, I do not think that the absence of communication from them to the Society after June 20, 1976, to inform the Society of Mrs. Maughan's feelings about the case, was in any way crucial to the development of the tragedy. What Mrs. Maughan sensed that day was already sensed in the Society by Mrs. Lo. Similarly the absence of communication after July 18, 1976, to inform the Society of Mrs. Maughan's observations of changes in Jennifer Popen's attitude, while perhaps of greater importance, was not crucial. It was not much after July 18, 1976 that Mrs. Lo herself sensed Jennifer Popen's changed attitude. Indeed Mrs. Lo had even earlier noticed various changes in Jennifer Popen's attitude and a coldness toward Mrs. Lo. I do not think any communication from Mrs. Maughan or Mr. Brouwer would have made any great difference.

In expressing this criticism of the Ministry's staff, I am aware that Annals Popen was the only person undergoing a term of probation. Subject only to the powers of a constable given to Mr. Brouwer by legislation, neither Jennifer Popen nor Kim were, in law, subject to the supervision of the Ministry. The Ministry could not require Jennifer Popen to do anything or to abstain from doing anything. The Ministry could not have required Jennifer Popen to submit to any assessment or testing by anyone. In practice, Mrs. Maughan's actions in relation to Annals Popen's term of probation were not as restricted that she confined her interest only to him.

While I have expressed criticism of Mr. Brouwer in some areas, I do commend him for being prepared to view his role and that of the Ministry as extending beyond the strict terms of The Probation Act and the probation order so as to include some effort to protect Kim.

Similarly my expressed criticism of Mrs. Maughan is as nothing compared with my respect for her as an individual and as a concerned and caring citizen possessed of considerable talents and human understanding, prepared to give of herself and her time without financial remuneration, to help to improve the lot of others. She is to be commended for her interest and for her actions which demonstrated it. She did her considerable best. I think the City of Sarnia and the County of Lambton, like any other city or county, would be better places in which to live if there were more Katie Maughans.

I hope my comments do not dissuade Mrs. Maughan or any other volunteer from continuing to serve. Theirs is a worthwhile, but often thankless task. They are needed.

Chapter XXVIII

The Farina Committee

In December, 1977 the Board of Directors of the Society were startled to note harsh criticism in the local media. The criticism related directly to the manner in which the Society had cared for Kim.

Until that criticism appeared the Board of Directors, as a Board, was unaware that the Society was in any way involved in the life of the child whose parents were on trial for manslaughter. Mr. Higgins was perhaps the only member of the Board of Directors who knew of the involvement.

In mid-August, 1976 Mr. David Allen, President of the Society, was advised that a ward of of the Society had died while still in the care of the Society. He understood that she had died by accidental means. Until the criticism of the Society appeared he did not associate the death of that ward with the manslaughter trial.

As a result of the published criticism of the Society a special meeting of its Board of Directors was held on December 15, 1977.

Prior to that meeting, Mr. Allen approached the Executive Director of The Ontario Association of Children's Aid Societies for advice. He inquired as to whether that Association would be prepared to assist the Society by appointing a committee which would be authorized to investigate the care of Kim and to report thereon to the Board of Directors of the Society. He received a favourable response.

At the meeting of December 15, 1977, Mr. Lovatt reported upon the history of Kim's case and he made some recommendations "to assist in preventing any recurrence of the Popen tragedy." I deal with the accuracy and adequacy of that report and with those recommendations elsewhere. That was followed by general discussion during which Mrs. Harvey and Mr. Lovatt answered questions.

The balance of the meeting is recorded in the minutes thereof as follows:

> "A suggestion for board consideration was then introduced by the President, Mr. Dave Allen, on the establishment of an impartial board of inquiry composed of three professional social workers selected by the executive committee of the O.A.C.A.S. Their job would be a throrough (sic) examination of all facts pertaining to the Popen case. The impartial inquiry of three social workers would then be asked to render an opinion on corrective measures that will help the Agency to prevent the recurrence of any such tragedy in the future.
>
> The formal motion of adoption was moved by Ald. M. Brown and seconded by Mr. R. Provencher that
> 'a three person board be selected by O.A.C.A.S. executive committee to review the case in question and attempt to complete such a study within one month that will bring forth any recommendations they wish to make for future operations of this Children's Aid Society.'
>
> After a brief discussion on its terms of reference in reporting to the Board of this Society and the financing of this impartial inquiry the motion received the unanimous consent of the Board members present."

On December 19, 1977, Mr. Allen as President of the Society, wrote to the President of the Ontario Association of Children's Aid Societies. In part he wrote as follows:

> "I am requesting, subject to your agreement, that you select 3 social workers whom you feel could visit Sarnia in order to 1) study this case in detail, 2) evaluate the decisions and actions taken by our own staff in the light of the actions taken by

> other community agencies, and 3) make a report summarizing the activities of the staff with respects (sic) to this case and offer any reactions or recommendations they feel appropriate. Hopefully a report could be made available for January 24, 1978, which is our next regular board meeting.
>
> The intention of such a review would be to examine the appropriateness of the staffs' actions in this case in order to prevent the recurrence of such a tragic event in future. Because our board is essentially a lay group we are not in the best position to take an objective nor impartial view of the matter. Hence a 'peer review' would be more fitting.
>
> I am unware of any past requests which are similar to the one being proposed here. Nevertheless I am hoping that you will look favourably on it. It is my further hope that the appointed parties would provide, for any member of our staff who may wish to express their views, an opportunity to do so."

In due course the members of the Committee were appointed. The members were Mrs. Margaret Farina, Mr. Bruce Heath and Mr. Arne Petersen. Mrs. Farina was appointed to be chairman of the Committee; so, for ease of reference in this chapter, I call the Committee the "Farina Committee" or the "Committee."

The academic and professional qualifications of the members of the Farina Committee are set forth in Schedule 1-E to this Report. Each member was well qualified by training and experience to perform the task assigned to the Committee. From my examination of their qualifications and from my assessment of them as a lady and gentlemen testifying upon the Inquiry, I have no hesitation in accepting their testimony and the validity of their report.

It is convenient for me now to deal with one somewhat questionable aspect of the circumstances surrounding the preparation of their report.

I have spoken of their report in the singular. In doing so I was not wholly accurate. They prepared two reports. That is the area of my concern. Had there not been full testimony of how that came to pass and had either of the two reports not been produced and had I not had the opportunity of observing the members of the Farina Committee as they testified, I would have had some difficulty in ensuring myself as to the validity and integrity of their report. All three of those provisions were met. I am satisfied. I will treat the two documents as constituting one report.

Nonetheless it is unfortunate that the impartiality of the Committee and the validity and integrity of their report were exposed even to an appearance of impropriety. It was entirely unnecessary.

It was the intention of the Board of Directors of the Society that the Farina Committee be independent of any influence from any source except their own professional expertise. The Board of Directors sought to achieve that independence by asking the Ontario Association of Children's Aid Societies to appoint the members of the Committee. The resolution asked the Committee to review the case and "bring forth any recommendations they wish to make." Mr. Allen's letter reinforced the expression of desire for impartiality.

The resolution itself was *une carte blanche*. Mr. Allen in meeting with the Farina Committee when they came to Sarnia to begin their study enlarged even that. He advised them that it was expected they would examine and report upon any administrative procedures or practices which in any way affected the handling of Kim's case.

It was assumed that the Committee would deliver its report to the Board of Directors of the Society. No thought was given to the possibility that that report might be given to any other person or authority. The Ministry of Community and Social Services, hereinafter called the "Ministry," was not involved beyond permitting one of its employees, Mr. Heath, to serve on the Committee.

On Friday, February 17, 1978 at a meeting of presidents and local directors of children's aid societies held in Toronto, Mrs. Farina gave Mr. Allen a copy of the report of the Farina Committee dated February 15, 1978. For some reason, not given in testimony, Mrs. Farina and Mr. Allen met that day with His Honour Judge George M. Thompson the Associate Deputy Minister of the Ministry. They looked at that report, but not in particular detail because time had not permitted. Mr. Allen lent his copy of the Committee's report to the Ministry official who had a photocopy of it made.

On Monday, February 20, 1978, Mr. John K. Macdonald, Director of Child Welfare under The Child Welfare Act, who had been in the office of the Associate Deputy Minister when the Committee's report was discussed on February 17, 1978, telephoned Mrs. Farina. He advised her that Mr. W.A.D. Rutherford, Q.C. Director of Legal Services of the Ministry had looked at that report. Presumably that was the copy made by the Ministry. Mr. Macdonald told Mrs. Farina that the solicitor was concerned that some statements in the report might be misconstrued and suggested that those statements be deleted.

On Tuesday, February 21, 1978, Mrs. Farina called a meeting of the Committee to consider that suggestion. They met with officials of the Ministry and its solicitor. By that time the Ministry's staff had read the Committee's report thoroughly. The Ministry was considering the advisability of a judicial inquiry pursuant to The Child Welfare Act. The Ministry officials suggested that the contents of the Committee's report warranted such an inquiry, particularly because of pressure upon the Minister in the Legislative Assembly urging him to do so.

Mrs. Farina said the Committee appreciated the advice of a solicitor. They had not earlier sought or had such advice. She said that on the suggestion of the Ministry's officials and on the advice of the Ministry's solicitor, the Committee:

> "agreed to make some alterations in the report...they were extremely minor alterations and the substance of the report was in no way altered or changed."

In this area, Mrs. Farina testified that at the outset it was intended that the Committee's report to the Board of Directors of the Society would be a "confidential" document. But by February 20, 1978 she felt that confidentiality could not be maintained. Mrs. Farina did not say it, but indeed confidentiality had been breached when a copy of the report was made for the use of the Ministry.

Her concern that confidentiality could not be maintained was a factor in Mrs. Farina's acceptance of the advice of the Ministry's solicitor.

I have reproduced a copy of the original report of the Farina Committee dated February 15, 1978 as Schedule 2-F to this Report and a copy of the amended report dated February 24, 1978 as Schedule 2-G. Readers of this Report may wish to form their own judgements as to whether the amendments are "extremely minor" and whether the "substance of the report" has been changed.

My own view is that the amendments proposed by the officials of the Ministry were designed and intended, at least in part, to remove or minimize criticism of that Ministry.

By this time, from reading the first version of the Farina Committee's report, if not from other sources, the Ministry knew that its performance of its duties would be subject to examination and perhaps to adverse criticism if an independent investigation of Kim's care and death were undertaken as by this Inquiry.

In proposing the amendments to the Committee's report the Ministry's officials put the Ministry's own self-interest ahead of the independence and reputation of the Farina Committee and its members.

The amendments certainly were not "minor" in the eyes of the Ministry. In the light of all the testimony and circumstances, I do not regard them as "minor."

I note that Mr. Heath, who had signed the first version of the Committee's report, did not sign the second. Mr. Heath was at all material times an employee of the Ministry. It was on the advice of the Ministry's solicitor that Mr. Heath declined to sign the amended report. He said there was concern that the Committee's report might tend to interfere with the judicial inquiry which was contemplated.

I do not understand the reason for such advice. Mr. Rutherford, the Ministry's solicitor, did not testify upon the Inquiry. I did not feel it necessary to the purposes of this Inquiry that he be subpoenaed.

One might be excused for believing that the Farina Committee amended its report to suit the pleasure of the Ministry. In all of this, the Ministry did no good service to the Committee or to the Society.

I do not know how the Ministry became involved in the process. Mr. Heath was an employee of the Ministry, but the Society had intended and expected an independent and impartial report. I am confident that when the Ontario Association of Children's Aid Societies sought out Mr. Heath to serve on the Committee the intent was that he would bring to the Committee all of his skills and knowledge as an individual and not as an employee or agent of the Ministry.

In my view no official of the Ministry should have participated in any way in the preparation of the report of the Farina Committee to the Board of Directors of the Society. Certainly the Society did not request that participation. Nor did the Committee. In my view the Ministry quite inappropriately, unnecessarily and to no good purpose interfered in the relationship between the Society and the Farina Committee.

The action of the Ministry's officials exposed Mr. Heath and the Committee to the possibility of criticism. It could quite fairly be suggested that the Committee in producing its report was unduly and improperly influenced by the Ministry and by Mr. Heath whom the Ministry regarded as its representative on the Committee.

The Ministry was in error to regard Mr. Heath as its representative on the Committee even though he was an employee of the Ministry. The Board of Directors of the Society had wanted an objective and impartial review of Kim's case. It would not get such a review if one or more members of the Committee were a representative of a body whose own interests might be involved.

In this review of the function of the Farina Committee I propose to treat the two versions of their report as being one report. In testimony upon the Inquiry each member of the Committee averred as to the unanimity of their opinions, separately and independently formed. All three had signed the first version of the report. Mr. Heath had not signed the second version, but, in his testimony, he stated his agreement with its contents. Neither Mr. Heath nor Mr. Petersen were questioned about the first version of the report. Only when Mrs. Farina testified, after them, was reference made to that first version. Mrs. Farina did not disclaim the validity or accuracy of the first version. While Messrs. Heath and Petersen were not recalled I am satisfied that, having signed the first version, they too would have defended its validity and accuracy.

The unanimity of opinion of the members of the Farina Committee was such that Mrs. Farina and Mr. Petersen, each in separate testimony, described it as being "uncanny." Each member of the Committee testified that, independently of the others, each had identified or recognized the same areas of concern or the points upon which they wished to comment in their report.

Subject to my comments upon it, I regard their report as being an excellent document. Its thoroughness and depth belie the pressures that were upon them to complete it quickly. The testimony of the members of the Committee were of great value to me.

The members of the Committee observed and testified as to the affairs of the Society, particularly as they might have affected the care which Kim received while a ward of the Society. Their review and testimony extended beyond those particulars to some observations as to the conditions generally prevailing in the Society at the relevant times.

The conclusions reached by the Farina Committee as recorded in their report and in their testimony were a substantial contribution to my Report. Those matters which they identified as areas of concern were demonstrated to be so by the testimony upon the Inquiry.

I propose now to review and comment upon their report. My comments shall be in the sequence of their report rather than in a chronological order.

The Committee voiced some concern as to discrepancies between two reports upon Kim's case prepared by members of the staff of the Society. One of those reports was dated December 8, 1977 and was prepared for the Child Welfare Branch of the Ministry. The second was dated December 15, 1977 and was prepared for the Board of Directors of the Society.

The concern expressed by the Committee parallels my view that the recordings and documents in the files of the Society are not reliable. I have identified in my Report several instances of inaccuracies in the papers of the Society.

The Committee reviewed their report against the background of the recordings in the files of the Society.

They noted that the file recordings indicated that on June 17, 1975 the Society first became aware of allegations that Kim had been abused. The report to the Ministry shows the date to be June 1, 1975 and the report to the Board of Directors shows it to be simply June, 1975.

They noted that the file recordings under date of June 19, 1975 state "this defensive hostile young mother should be closely supervised considering the history of the recent six weeks" and refer to two prior incidents of injury and hospitalization. That statement and reference are not mentioned in any way in either the report to the Ministry or the report to the Board.

I would note as well that the report to the Board of Directors stated that Jennifer Popen had a plausible reason for the faint bruises seen by Mrs. Saul and Mrs. Hoad on June 17, 1975. Neither the recording in the files nor the report to the Ministry mention any such plausible reason. Neither the testimony of Mrs. Saul nor that of Mrs. Hoad mentioned that Jennifer Popen offered any plausible reason for the bruises. The only "explanation" was a denial that Kim had been abused. That denial was attributed to both Jennifer Popen and Annals Popen.

They noted that, under date of June 19, 1975, the recordings in the files of the Society state that:

> "The case was due for assignment to H.R.C., ...There was apparently a misunderstanding about the opening of the case at that time."

The report to the Ministry, still in the same portion bearing the date of June 1, 1975, states:

> "the case was not assigned but a follow-up call was made to the City Police who suggested that we wait to make a home visit. They would report back to us if necessary."

The report to the Board of Directors, still in the portion dated June, 1975, stated that there was

> "'insufficient evidence to warrant intervention on the part of the society' and that the police accepted a 'watching brief.'"

The members of the Farina Committee discussed the above matters with the Sarnia Police Force. Consistent with the testimony of police officers upon the Inquiry, they were advised that the Sarnia Police Force denied having made the suggestion or either arrangement referred to in the recordings and reports of the Society. In keeping with the testimony of police officers upon the Inquiry the members of the Farina Committee testified that the members of the Sarnia Police Force stated that they had telephoned the Society on July 2, 1975 to "follow-up" the case.

The Committee believed that the discrepancies in the three documents were "serious" and "warrant[ed] further explanation." That is the way the Committee wrote in the February 24, 1978 version of their report. The February 15, 1978 version of their report expressed their opinion that the discrepancies they had noted were

> "serious in that they could indicate an attempt to camouflage case handling that is seriously inept, and inexcusable in a case that is clearly one of child abuse."

This is the first area of amendment of the Farina Committee's report following the intervention by personnel of the Ministry, including its solicitor. The effect of the amendment is apparent. It removes the suggestion that the discrepancies might have arisen from an attempt to deceive and the motive for such attempt. That is unfortunate.

I share the opinion, expressed by the Committee or inherent in their report and testimony, that there was an attempt to deceive those who might read the documents without the benefit of knowledge of the testimony presented upon the Inquiry. The motive was to conceal the errors and omissions in the handling of Kim's case.

It would seem that the abundant caution on the part of the Ministry's solicitor prevented the Committee from clearly expressing their obvious concern that all was not well in the handling of Kim's case and that someone was attempting to conceal the ineptitude of some of the personnel of the Society. No testimony was given to suggest that any attempt was made to rephrase the portions of the deleted phrases or clauses so as to remove any word or innuendo that may have exposed the members of the Committee to any risk of civil liability. Removal of only four words, "an attempt to camouflage," would seem to be sufficient to remove such risk, but yet would leave untouched the opinion that the handling of the case by the Society was "seriously inept" and "inexcusable."

The whole bite of the first version of that portion of the Farina Committee's report was removed to be replaced by what, in the light of matters dealt with elsewhere in the Report, I would regard as being a somewhat standard approach of the Ministry to suggest review or scrutiny.

The Farina Committee felt that the points at issue in this regard were the handling of Kim's case in its initial phase and the discrepancies in reports and records of the Society and the Sarnia Police Force.

The Committee noted what it described as the excellent quality of the initial intake of June 17, 1975 and the responsiveness of the Society then. That related to the work of Mrs. Dick, Mrs. Saul and Mrs. Hoad from the time of Police Constable Gander's arrival at the offices of the Society until Mrs. Saul completed her report to Mrs. Harvey that day.

In his testimony Mr. Heath said that, in his opinion, the Society did not have sufficient information to justify Kim's apprehension by the Society under The Child Welfare Act on June 17, 1975.

The two versions of the Committee's report, in different words, but to the same effect, express the Committee's view that they were not given any adequate explanation for the case having been left unattended for about ten weeks until August 29, 1975.

I have expressed in this Report a corresponding opinion that such lack of attention was not explained to my satisfaction. The Farina Committee appear to have accepted what they were told about the entry in the records under date of August 29, 1975. I have declined to accept it as being accurate.

The second incident of amendment of the first version of the Committee's report occurs in this portion of their report.

The second version, unlike the first, contains a recommendation that, in view of the hiatus from mid-June to late August, 1975,

> "procedures, routines and monitoring of the way in which cases are transferred from intake should have further scrutiny."

That addition does not in any way detract from the general tenor of the first version. It is a logical development of the first version.

My only criticism of the amendment would be to suggest that its wording seems to presuppose that "procedures, routines and monitoring of the way in which cases are transferred from intake" were in existence. I am not satisfied that they were. No written procedures upon transfers of cases were produced by the Society upon the Inquiry. Some witnesses, such as Mrs. Harvey, testified that there were, within the Society, generally accepted procedures well-known to the staff.

The testimony as to what happened from June 17 until August 31, 1975 persuades me that the staff of the Society were not aware of any such procedures. Mrs. Dick and Mrs. Saul, both experienced workers, expressed some assumptions as to what might have happened, but neither indicated there was any generally accepted policy or procedure. Neither of them said that any procedure required Mrs. Dick's notes and Mrs. Saul's notes to be dealt with in any particular way. Each was unsure as to what had happened to her notes, but tended to feel they had been given to Mrs. Harvey who, in her turn, was unable to explain the lack of immediate continuity from June 17, 1975.

At this point in the first version of their report the Farina Committee devoted almost a full page to a discussion of their efforts to determine what had happened to Kim's case during the ten weeks from June 17, 1975. They outlined conversations with Mr. Carter and Mrs. Harvey. They mentioned some conflict between the positions taken by Mr. Carter and Mrs. Harvey. They showed how easily they were able to check and reject one of Mrs. Harvey's suggestions as to why the case was not dealt with. She had suggested that Mr. Carter had been on holidays, but records of the Society negated that.

The long paragraph concluded:

> "In any event there is no escaping the fact that responsibility for case assignment and for monitoring what happens to cases, rests clearly with the supervisor and no one

> else. This is particularly important in abuse cases. The explanations give (sic) to the committee are not sufficient."

The entire paragraph was not reproduced in the second version. This was a further amendment after the Committee received advice from the Ministry and its solicitor. Again the Committee's report was emasculated. Its criticism of Mrs. Harvey, merited on the basis of the testimony presented upon the Inquiry, was removed.

There was no testimony that any effort was made to revise the phraseology of the paragraph to remove any perceived risk of exposure to civil liability. Had the Board of Directors been left with only the second version of the Committee's report they would not have been aware that the Committee fixed Mrs. Harvey with responsibility for the lack of assignment and monitoring of Kim's case. The Board of Directors would not have been aware of some of the explanations which the Committee regarded as being "not sufficient."

At this point in the first version of their report the Committee wrote of their concerns about Mr. Higgins' "apparent interference" with Mr. Carter and Mr. Carter's

> "lack of knowledge of his rights and his failure to challenge or to ignore Mr. Higgins' interference."

They wrote of Mr. Carter seeking advice from Mrs. Harvey who told him to honour Mr. Higgins' request, but who, when asked by the Committee, could not explain why she gave that advice. The Committee commented on the failure of the Society to seek advice.

The Committee mentioned Mr. Higgin's membership upon the Board of Directors. The Committee was told that Mrs. Harvey was intimidated by Mr. Higgins.

The first version of the report contained a short paragraph to the effect that Mrs. Harvey told them that she had "previously" asked Mr. Lovatt to retain a lawyer on behalf of the Society, but her request was denied on the ground of lack of funds.

The first version of their report then set forth the Committee's concern about court hearings related to Kim's case. The Committee wrote of Mrs. Harvey's request for wardship for only two months which she said was a "strategy" to deal with Mr. Higgins and which she explained to Judge Nighswander privately. That expression of concern ended as follows:

> "If this is an accurate example of the way the court is used, and if this is an example of methods employed by the Society's supervisor/court worker, and if this is an example of the degree of trust between supervisor and caseworker and of the attitude to Mr. Higgins, then it brings the Society's integrity into question, as well as that of the court."

For the sake of brevity in the designation of any court, I shall hereafter in this Chapter, if the context permits, call the Provincial Court (Family Division) of the County of Lambton the "Family Court"; the Provincial Court (Criminal Division) of the County of Lambton the "Criminal Court" and the Family Court and the Criminal Court, collectively, the "Provincial Courts".

All of that expression of concern about Mr. Higgin's apparent interference with Mr. Carter, about Mr. Carter's lack of knowledge and his failure to oppose Mr. Higgins, about Mrs. Harvey's failure to assist Mr. Carter, and about the hearings in the Provincial Courts, particularly the portion reproduced in the preceding paragraph, was not repeated in the second version of the Committee's report. Nor was Mrs. Harvey's comment about Mr. Lovatt's rejection of her suggestion that the Society retain a lawyer.

That expression of concern had required about three full pages of the first version. It was replaced by two short paragraphs, on about one half of a page, in the second version.

The first of those two paragraphs was simply a recommendation that the Society retain a solicitor and that the staff receive training in relation to the Court and the legal representatives of clients.

The second paragraph recommended that the Society request The Law Society of Upper Canada to advise them as to the possibility of conflict of interest if a member of its Board of Directors were a lawyer representing a client involved in a case active in the Society.

Gone from the first version was all of the criticism of the personnel of the Society, particularly Mrs. Harvey and Mr. Carter. Gone was all of the criticism of Mrs. Harvey's conduct in her alleged strategy in dealing with Mr. Higgins. Gone was the condemnation quoted in the preceding paragraph. Gone was the reference to Mrs. Harvey's statement about Mr. Lovatt's refusal to retain a solicitor. Gone was the reference to Mrs. Harvey being intimidated by Mr. Higgins.

The strong and expressive paragraphs deleted from the first version were replaced by a mild and innocuous recommendation for staff training in these areas and for the employment of a solicitor.

The only item that was more forcefully stated in the second version than it was in the first version was that which related to the possibility that Mr. Higgins had a conflict of interest.

Anyone reading only the second version of the Farina Committee's report without some awareness of the testimony presented upon the Inquiry would not learn that the Committee had the various concerns it expressed and that the Society's personnel lacked some knowledge and expertise basic to child welfare in Ontario.

In both versions of their report the Committee then moved on to express their concern about the rationale for and the procedure used in transferring Kim's case from Mr. Carter to Mrs. Lo.

In the beginning of this portion each version employs similar words and phrases to describe what the Committee felt were customary, sound and acceptable practices and procedures to be followed in any case of a transfer of a case from one worker to another. These involved a conference of the supervisor and workers, at least the two directly involved, and a clear recording of the rationale of the transfer, all followed by a gradual process to introduce the new worker to the client and to explain the reason for the transfer.

The Committee then related its examination of this phase of the management of Kim's case. They had found no recording of the reason for the transfer. There was merely a recording of its announcement by Mrs. Harvey to Mr. Carter. The Committee inquired about this.

Mrs. Harvey gave them several reasons for her decision. Those reasons included Mrs. Harvey's desire to have a female worker on the case and her belief that Mrs. Lo and Jennifer Popen would be "a good match" because both were young, one was oriental and one was Jamaican. They included the fact that Mrs. Lo, new on the staff of the Society, had a small caseload. Another reason stated by Mrs. Harvey was that Jennifer Popen would not talk to Mr. Carter.

Each version of the report then records that Mr. Carter gave them "a different picture." But the two versions of the report do not describe that "different picture" in the same way.

The first version is that Mrs. Harvey told Mr. Carter that the case was to be transferred to Mrs. Lo and he felt strongly that that was being done to appease Mr. Higgins.

The second version is simply a statement that Mr. Carter had not been involved in the decision to transfer the case and that his views as to the reasons for the transfer were at variance with those stated to the Committee by Mrs. Harvey.

While both versions of the Committee's report are equally critical in their expression of concern about the failure to follow customary and sound professional practice, the strength of the criticism is removed from the second version by deletion of the statement by Mr. Carter as to what he felt was the reason for the transfer.

The amendment leaves anyone who reads only the second version without any information as to the differences between the views expressed by Mrs. Harvey and those expressed by Mr. Carter.

Both versions of the report contain a short paragraph in which the Committee question the method used in transferring the case. They state the tranfer should be for the benefit of the child and the planning for and protection of her.

In the first version that paragraph ends with the sentence:

> "In considering the method used in transfer we must question the Supervisor's use of her authority, as well as her professional practice."

That sentence does not appear in the second version. It is another instance of amendment by removal of directly stated criticism of Mrs. Harvey's style or method of performing her duties and of the adequacy of her professional practice.

Then both versions contain a paragraph continuing the discussion of the rationale for the transfer. Both versions contain the statement that a case as obviously serious as Kim's should never be assigned to an inexperienced worker with no social work education or experience and that Mrs. Lo had been with the Society for less than three months. Each version states the Committee's recommendation that

> "these cases be assigned to the most experienced, well qualified personnel."

In the first version that paragraph concluded with the sentence:

> "Assignment of this case to a person with virtually no protective service experience and no social work qualifications was a gross error in judgement on the part of the supervisor."

That sentence does not appear in the second version. The amendment effected the removal of a strongly stated direct criticism of Mrs. Harvey's judgement.

Each version then began an examination of the process of decision-making within the Society and particularly the decision to return Kim to her parents. The Committee set out the identity of those to whom they spoke in making that examination.

Each version mentions the recording of a meeting or case conference on May 6, 1976 to decide if Kim would be returned before or after the birth of Jennifer Popen's child expected in early July. Each version states that there did not appear to be any question of Kim's eventual return. They stated that the two files, one in the Family Services Department and one in the Children's Services Department of the Society, indicate that the decision to return Kim was made at that conference.

Each version continues to state that those recordings do not correspond with statements made orally to the Committee. The clause in the first version is as follows:

> "...the verbal statements made to us indicate that the conference was merely a formality, that the family service supervisor had previously made the decision that the child would be returned, and that the opinion of others would not be considered."

In the second version that clause has been amended and is as follows:

> "the verbal statements made to us indicate that the basic philosophy of the family service department was to return children to their homes, and that this philosophy would usually overrule individual opinions."

The amendment has varied the thrust of the Committee's criticism. In the first version it was to the effect that Mrs. Harvey had made the decision to return Kim and would not consider the contrary opinion of anyone. In the second it was merely a statement of the "basic philosophy" of the family service department and that it usually overruled individual opinions.

While the statement of basic philosophy is set forth in the second version, the criticism contained in the first version more accurately reflects the facts of Kim's case as I have found them to be. The amendment shifts the responsibility for the basic decision, the decision that Kim would be returned to her home, as distinguished from the subsidiary decision, the decision as to the appropriate time for that return to be effected. It shifts the responsibility for the basic decision from Mrs. Harvey, where it belongs, to "the basic philosophy of the family service department."

Each version then mentions the comments attributed to Police Constable Wyville, "Do you want her in her grave within three months?", and a comment by Mr. Khattab that he was "amazed to hear that the child had been returned." Both versions mention the recording, in the file in the Children's Services Department, of Kim's upsets and regressions after visits home.

In the first version the sentence mentioning those upsets and regressions is as follows:

> "The Child Care record indicates Kim's upsets and regression after visits home, and Mrs. Popen's awkward handling of the child."

That pararaph then was concluded with the following two sentences:

> "It would appear that the philosophy of the family service department supervisor was to return children to their homes as soon as possible regardless of the opinion of other workers familiar with the case. It appears that the Society lost sight of its primary mandate which is to protect children."

In the second version the sentence mentioning Kim's upsets and regressions does not contain the clause "and Mrs. Popen's awkward handling of the child." The concluding two sentences of the paragraph just quoted are replaced by the following:

> "It would appear from the information given to us that the Society, in an effort to re-unite the family, lost sight of its primary mandate which is to protect children. It is our opinion that the process of decision-making related to the handling of cases requires further scrutiny."

The amendments to that paragraph remove the sole reference which indicated something akin to criticism of Jennifer Popen. Further criticism of Mrs. Harvey was removed. The criticism of the Society as an entity remained. The amendment contains the usual bland suggestion that there be further scrutiny; this time scrutiny of the process of decision making related to case handling.

The effect of the amendments is to remove any criticism of individual persons, but to leave the criticism of the society as an entity.

The first version contained a paragraph defining it as being a serious situation if, in each case, all facts, observations and opinions are not shared, discussed and considered. There is a statement that decisions in each case in a social work agency must be made on a consideration of that case individually and not solely on the basis of an overall philosophy. That paragraph concluded as follows:

> "In view of the evidence given to us, our opinion is that the family service supervisor failed to consider other opinions and made the decision to return Kim without adequate evidence that she would be safe. In fact, on the contrary, there was considerable evidence that this was still a high risk home at the time the decision was made to return Kim home and continued to be so."

These two sentences form a strong statement by the Committee of their opinion of Mrs. Harvey's performance in her position. Not only did she fail to consider other opinions and decide to return Kim without adequate evidence that she would be safe, but, even more critically, she did so in the face of considerable evidence to the contrary.

That opinion is not expressed in the second version. The Board of Directors of the Society, if they depended solely upon the written report furnished to them, were deprived of that expression of criticism of the procedures used and the decision made by Mrs. Harvey in relation to Kim. They were also deprived of the Committee's comments upon the need for discussion of each case individually to share facts, observations and opinions.

Each version then contained a lengthy paragraph. The differences between the two versions appear to me to be of no great significance. The paragraph contain some general comment upon some specific factors in Kim's case. They include a statement that the Committee interpreted the recordings in the Society's file as indicating a superficial quality of "the relationship and understanding," presumably between Mrs. Lo and Jennifer Popen and Annals Popen, and a naivete in dependence upon the Parent Effectiveness Training Course. A number of "more specific indicators" were mentioned. They were incidents or comments mentioned or made in those recordings. The last of those indicators was the recording under date of July 26, 1976 that the Society would seek a supervision order for various reasons, including a statement that "the home situation was not stable enough."

In the first version the discussion of decision making led to a substantial paragraph about the authority structure in the Society.

It contained comment upon the degree of case control assumed by the Family Services Department. Opposition to any decision by Mrs. Harvey, who "had the final word," was said to have been regarded as a personal affront.

The Committee set forth their views as to the procedure, to be followed in the event of any difference of opinion. That included discussion, seeking of further opinions and, if necessary, consultation with "the final authority," the Local

Director. The Committee wrote that none of that was done.

They wrote of being told of Mrs. Harvey's "misuse of authority." They heard of it so often that they gave credence to what was told to them.

They commented upon Mr. Lovatt's reluctance or inability to deal with that situation.

They wrote that, while Mr. Lovatt might not have known the facts of Kim's case, since he would rely upon Mrs. Harvey to keep him informed,

> "certainly he could not avoid knowing of the strains brought about by [Mrs. Harvey's] assumption of authority."

That entire paragraph is omitted from the second version. By the amendment those who would read and rely upon the Farina Committee's written report were deprived of some relevant comment by the Committee upon the structure of the Society, Mrs. Harvey's alleged abuse of authority and Mr. Lovatt's failure to act to correct the situation.

Each version then contains a statement of the Committee's concern that Kim's infant brother was left in the family home for some days after her death under certain arrangements for his care.

In each version of the report the Committee wrote of their concern about the lack of involvement of the Society with other agencies and services in the community. In the second version the comment was unnecessarily diluted by addition of the adjective "apparent" so that what the first version described as "the lack of involvement" of the Society became "the apparent lack of involvement."

I have expressed elsewhere in the Report my finding as to the insular position adopted by the Society and its failure to communicate with others to seek or furnish information or assistance.

In those paragraphs the Committee wrote of the onus upon the Society, who bear the prime responsibility in any case of suspected child abuse.

That would require the Society to convene meetings, at frequent intervals and at points of decision in case management, of all persons in any way connected with the case, whether within the Society or in some other capacity. The Committee wrote that in Kim's case regular conferences did not occur. They wrote that in Kim's case any sharing of information "seemed to happen on an individual and almost casual basis."

In each version the paragraph concluded with a sentence that the decision to return a child in a risk situation is too crucial to be left with one or two individuals.

Each version of the report then contains comment upon the qualifications and training of the staff of the Society. Reference is made to Mrs. Lo's lack of social work qualifications and experience. They also mention lack of knowledge, on the part of Mr. Carter and Mrs. Harvey, of the authority and rights of the Society. In the first version the sentence was extended to include "interference of the lawyer [Mr. Higgins]" as an example of their lack of knowledge. In the second version that extension became a reference to their lack of knowledge "in relation to the Society's role with the courts."

The Committee commented in both versions upon programmes of training and continuing education and some unusual difficulties therein in the Society resulting in tensions between groups of the staff.

The paragraph concludes:

> "We must ask why this situation has been allowed to develop."

The concerns mentioned in that paragraph led the Committee into discussion of the role of the administration of the Society. The corresponding portions of the two versions are similar, but contain variations of expression and emphasis.

In the first version they wrote of comments by staff members, that Mr. Lovatt failed to exercise his authority or to give leadership to the staff so that his role was usurped by Mrs. Harvey who lacked authority to act as administrator.

In the second version that was reduced to indicate that, in this connection, staff members commented only upon Mr. Lovatt's "lack of leadership and direction."

In both versions the Committee wrote that the staff complained that Mr. Lovatt's lack of firm leadership and control resulted in a sense of frustration and abandonment.

In the first version the Committee expressed surprise at the lack of clear procedural directives and written guidelines. In the second version there was no mention of surprise.

In both versions the Committee commented upon poor planning, sloppy practices in the Family Services Department and lack of security of records.

In both versions the Committee wrote of low staff morale and the failure to pursue that problem. The Committee recognized that some tension between departments is usual, but they felt that in the Society the tension was so extreme as to perhaps affect staff members in their work.

In both versions, with minor changes of a word or a phrase, the Committee wrote of being told of very poor relationships between the staff and the Board of Directors, a lack of communication and understanding and even a lack of defined channels of communication.

They noted that the Board of Directors was not informed of Kim's case until it was mentioned in the press in December, 1977.

They wrote of some fear and hesitation of some staff members that to speak with the Committee might lead to reprisals. They wrote that there seemed to be little feeling of loyalty or commitment by the staff to the Society.

In both versions the Committee stated that they would like to think that the events of Kim's case could not be repeated at the time of their report. In somewhat differing language in the two versions they expressed doubt or reservation of opinion upon that. The basis for the doubt or reservation was that they had been told of the Society's apparent reluctance to act on other cases referred to it. They wrote of two specific cases and gave some detail of one of those cases.

In the first version of their report the Committee concluded that portion of their report as follows:

> "If this report is factual (and it can be checked) then we have doubts about the Society's capacity for responsiveness in the carrying out of their mandate, and again of the quality of supervision and professional standards."

In the second version that concluding sentence was replaced by the following:

> "The committee recognizes that this was a verbal report and was unsubstantiated by evidence. The case records, however, can and should be checked."

The amendment reduces the force of the Committee's statement that, if a review of the files of the two cases confirmed what had been told to the Committee, they would have doubt about the capacity of the Society to carry out its mandate and about the quality of supervision and professional standards within the Society. What is left is the so usual bland suggestion that the files be checked.

In both versions the Committee stated that the Society did not bear sole responsibility for Kim's case. In the first version they stated that responsibility must be shared "between the Society, the Ministry, the legal system and the community." In the second version they wrote that responsibility must be shared "by other systems which impinge upon the Society".

They wrote that having detailed the role of the Society they would "look briefly at the others," in the first version, or "look briefly at some of the others", in the second version.

In each version there was a portion with the caption "(a) The Ministry of Community and Social

Services." That is followed by a statement that one of the purposes of the Child Welfare Branch of that Ministry is to supervise how children's aid societies carry out their mandate. Then follows a brief extract from section 2(2)(a) of The Child Welfare Act.

It is at this point that the intrusion of the Ministry staff and solicitor into the findings of the Farina Committee is most apparent. The beneficiaries of that intrusion were the Ministry and thus its staff.

In the first version the Committee had written:

> "The Ministry did not, in fact, carry out this function during the time of the Popen case."

In the second version that sentence was replaced by:

> "It would have been desirable had the Ministry had closer contact with the Society during this period."

The difference is apparent. It is not one of words or expression. It is one of thrust. A forthright clear statement that the Ministry had not carried out one of its duties, a duty imposed upon it by the Legislative Assembly of Ontario, became a meek, innocuous whimper that "it would have been desirable had the Ministry had closer contact with the Society during this period." The second version does not even indicate that the Ministry bore any responsibility for the absence of the "desirable.... closer contact with the Society."

In the first version as it continued it comments under the caption "The Ministry of Community and Social Services" the Committee wrote:

> "Another purpose of the Ministry is to provide adequate funding so that an acceptable level of service is maintained."

That sentence does not appear in the second version.

The amendment brought about by the Ministry removed the Committee's statement of its view, that one of the Ministry's purposes was to provide funding adequate for the maintenance of acceptable levels of service by the Society.

The significance of the deletion becomes apparent as one reads on in the Committee's report. In both versions, the Committee wrote of hearing of high caseloads, lack of time and insufficient supervisory staff. In the second version they stated they did not "verify" those statements.

The second version did not contain the comment in the first version that the Society did not retain a solicitor "due to lack of funds." As I view that amendment I recall the testimony of Mrs. Harvey, not the most reliable basis for any definitive conclusion, and of Mr. Lovatt that items in budgets of the Society intended to provide legal services had not been approved by the Ministry.

The failure of the Society to have had the advice of a solicitor in connection with various phases of the handling of Kim's case is discussed elsewhere in the Report. While the Board of Directors did make funds available for that purpose in January, 1976 the Committee's statement in the first version of its report is valid. Until January, 1976 funds were not specifically provided for legal services although such services had been obtained in special instances in the past.

The deletion of that sentence is part of the pattern begun by the earlier removal of the statement of the Ministry's obligation to provide funding adequate to maintain satisfactory services.

In both versions the Committee wrote about the need for appropriate staff qualifications and training programmes. They wrote of their suspicion that Mr. Lovatt channelled his energies into budget rather than service considerations. They noted the absence of an accountant from the Society's staff. They said all of that contributed to low staff morale and decreased effectiveness.

In the second version they spoke of these as being "areas that require further examination, by the Board of Directors and the Ministry."

The overall effect is that a portion of the Committee's report which began in a forthright manner to look at the role of the Ministry ended up as a mild expression of regret that there was insufficient contact between the Ministry and the Society coupled with the same sort of bland suggestion that the Board of Directors and the Ministry examine some areas further.

In the first version the Farina Committee devoted about one page to the responsibility it felt "the legal system" must bear.

Under the caption "(b) The Legal System," they wrote of the number of adjournments and Mr. Higgins' "interference" with Mr. Carter. They felt that though those actions may be "accepted legal practice" they obstructed the Society's handling of the case.

They mentioned the reports in the press containing remarks by His Honour Judge Michael R. Meehan who sat on the trial of Jennifer Popen and Annals Popen for manslaughter in the Court of General Sessions of the Peace at Sarnia in December, 1977. It was those reports which brought Kim's case to the attention of the Board of Directors of the Society and to the attention of the public. They opined that Judge Meehan might have expressed his concerns through a "more appropriate channel."

The second version contains no such caption as "The Legal System" nor does it contain any of the comments which appeared under that caption in the first version.

I am unable to understand the reason for the amendment. In various chapters of this Report there are comments which are directed to some of the same areas of concern. Witnesses testifying upon the Inquiry spoke of the desirability for speed of process in the management of cases in the child welfare field. That included legal process. Even in the second version of their report the Farina Committee wrote of their concern about the qualifications and knowledge of the staff of the Society. Part of those concerns related to a lack of knowledge of the rights of the Society "in relation to legal representatives of clients" and a lack of understanding of "their role in relation to the court."

The manner in which the Society's application and the charge against Annals Popen and Jennifer Popen in the Provincial Courts were conducted and the way in which the staff of the Society and others acted in relation to or in consequence of those proceedings are relevant to any consideration of Kim's case and the manner in which it was handled by the Society.

If the Farina Committee wanted to comment thereon, as they did, for otherwise they would not have so written in the first version of their report, they should not have been dissuaded therefrom by a cautious official of the Ministry.

The "legal system" is not so tender or fragile that it cannot withstand fair comment. The comments in the first version were fair although they might have reconsidered their use of the word "interference" in relation to Mr. Higgins' actions on behalf of his clients. What he did to keep Mr. Carter from Annals Popen and Jennifer Popen became "interference" only because Mr. Carter and Mrs. Harvey permitted it to "interfere" with what the Society should have been doing for Kim.

In each version of the Committee's report under the caption, "The Community", lettered "(c)" in the first version and "(b)" in the second version, the Committee wrote that

> "the community must also share in the responsibility for the death of this child."

They then wrote of the Board of Directors as representatives of the community. They wrote of a lack of interest in the work of the Society and of the failure of citizens to report child abuse.

Under that caption there was a short paragraph in the first version which was not placed in the second version. It was as follows:

> "The derogatory appellation 'child snatchers' is well known to CAS staff, and in an effort to encourage the community to use their services, societies generally have reacted by being hesitant to apprehend children, and having apprehended, to reuniting them with their families as soon as possible."

Apart from my inability to be certain as to the meaning intended by the final clause, I do not understand why that paragraph was not written in the second version. The Committee were expressing a view and should not have been deterred. They may have wanted to consider some changes so as to make their meaning clear. But it was a statement that, to overcome a derogatory appellation, children's aid societies generally have reacted in a particular way.

The breadth of the amendments suggested by the Ministry's staff is most apparent when one reads the portions of the Committee's report appearing under the caption "Recommendations".

In the first version there were ten recommendations, the first of which had five components. They were expressed upon almost two and one half pages. They included, in brief, recommendations that the Board of Directors review the administration of the Society, and the competence of supervisory staff and the sufficiency of other staff. The Committee recommended that the Board of Directors and the staff of the Society establish written policies and procedures and seek direction from the Law Society of Upper Canada with reference to the matter of conflict of interest. They recommended adherence to procedures detailed in the 1976 publication by the Ontario Association of Children's Aid Societies entitled "Guidelines of Practice and Procedure in the Handling of Cases of Child Abuse."

Two of the recommendations called upon the Ministry to honour its legislated function of review and consultation and to provide

> "on-going consultation of a professional calibre to assist the Society to maintain professional standards of practice."

Two of the recommendations were that

> "the Province undertake to investigate the adequacy of funding for the child abuse program and protection services of this Society"

and review

> "the present practice relating to use of the courts and the legal system in child welfare cases."

None of those recommendations are set forth in the second version. They are replaced by two short paragraphs. In the first paragraph the Committee state that serious concerns were raised and they recommend that the Board of Directors request the Ministry "to initiate a Judicial Enquiry." In the second paragraph they recommend that the Ministry be requested to provide professional staff to assist the Society pending the results of such an "Enquiry."

The effect of the amendment was to remove the Committee's recommendations which, by their very nature, were critical of the Society, its Board of Directors, its staff, the Ministry and "the Province". They were replaced by a recommendation for a judicial inquiry and for assistance by the Ministry to the Society in the form of professional staff.

As I have noted earlier in the Report, the two versions of the report of the Farina Committee are reproduced as Schedules 2-F and 2-G to the Report so as to show the full context of any portion I have set forth or mentioned.

Having commented upon the two versions of the report of the Farina Committee I wish now to examine their testimony upon the Inquiry.

Their review of relevant affairs within the Society was conducted from the perspective of highly trained, skilled and experienced social workers. They performed their task and reached their conclusions without interference from anyone. Only the second version of their report reflects any outside influence. Each of them applied to that review and to the formulation of the conclusions reached by the Committee her or his own expertise independently of the others. In assessing the expertise, competence and procedures of the staff of the Society in Kim's case each member of the Committee measured such expertise, competence and procedures against what she or he understood were the standards or levels thereof which would have been standard, acceptable and applicable during the years of Kim's life.

Each of them endorsed the accuracy of the second version of their report even though Mr. Heath, on the advice of the Ministry's solicitor, had refrained from signing it. All of them had signed the first version. None of them were examined in detail upon the contents of the first version. Its existence came to the attention of the Inquiry only in one of the later periods of the cross-examination of Mrs. Farina. A copy of that version was not immediately admitted as an exhibit. Questions about it were general in nature. Mrs. Farina testified that the amendments to the first version of the report were "extremely minor" and "the substance of the report was in no way altered or changed." I presume that both Mr. Heath and Mr. Petersen shared that opinion.

I have already expressed my opinion that the amendments were significant and did affect their report. The amendments removed or diluted almost all criticism of the Ministry. They removed or diluted some expressions of the opinions of the Committee and some of their criticism of the qualifications and expertise of the staff of the Society.

I accept Mrs. Farina's explanation that she had some concern that the Committee's report could not remain a "confidential" report to the Board of Directors of the Society. She said that in the first version she "had named names" and she thought "it was probably very good advice to delete those names and refer instead to position." I find that only one name, that of Mr. Higgins, which appeared in the first version did not appear in the second version. Anyone having any knowledge of the case would easily determine the identity of anyone mentioned in the second version even if that person was not named.

It would have been appropriate for the Farina Committee to seek legal advice. Either version of their report might have contained words, statements or innuendos which might have exposed them to risk of civil liability. Unfortunately they did not seek independent legal advice.

The Committee were indiscreet in accepting advice from the Ministry to remove or amend portions of their report in which they commented upon the Ministry. By doing so they exposed themselves to criticism. The Ministry was interested in those portions of the Committee's report. The impartiality and independence of the Committee could be questioned.

As I have already stated I am satisfied that the Farina Committee conducted their review and reached their conclusions, as expressed in the first version of their report, entirely independently and without interference or influence by the Ministry. The first version more accurately and fully expresses their independent findings, opinions and conclusions.

The second version is a weakened or diminished document. It would not have been of much use to the Board of Directors of the Society without the benefit of awareness of the testimony given and exhibits presented upon the Inquiry.

By February 21, 1978, the Committee were aware that the Ministry was already considering an order for a judicial inquiry. On February 23, 1978 the Minister of Community and Social Services advised the Legislative Assembly that he had "decided to hold a judicial inquiry."

By the time the Committee wrote the second version of its report on February 24, 1978 and when that version was presented to the Board of Directors on February 28, 1978, the first recommendation in it was anticlimactic. There would be no point in requesting the Ministry to do something which the Minister had already announced was being done.

The concerns of the Farina Committee were well justified.

As they found, the records and documents of the Society were not consistent and reliable.

As they found, the handling of Kim's case by the Society was "seriously inept and... inexcusable," but one would not learn that from perusing the files, records and documents prepared, maintained or retained by the Society.

Explanations for the absence of service to Kim from June 17 to August 31, 1976 were not satisfactory when they were examined during the Inquiry. The Committee were not satisfied with the explanations given to them.

As the Committee found, Mr. Carter and Mrs. Harvey should not have failed to counter Mr. Higgins' actions on behalf of Annals Popen and Jennifer Popen, even if it involved seeking advice and assistance from Mr. Lovatt or from a solicitor or the Court or elsewhere.

It was appropriate for the Committee to have considered Mr. Higgins' position as a member of the Board of Directors of the Society. His position was examined carefully upon this Inquiry.

The delays and other incidents involving proceedings in the Provincial Courts merited comment by the Committee. So too did the presentation of the application of the Society for custody of Kim. Those matters were considered upon the Inquiry.

As the Committee found, the entire management of Kim's case was unacceptable, from the initial absence of attention from June 17, 1976, to the delays in proceedings in the Provincial Courts, the paucity of appropriate records, the decision to return Kim to her home, the transfer of her case from Mr. Carter to Mrs. Lo and the quality and extent of service to her from May 27 to August 11, 1976.

As the Committee found, the organization of the Society, its Board of Directors and its staff, and the channels of communication and authority within that organization merited review and comment.

As the Committee found, the policies, procedures and practices within the Society were non-existent or uncertain, incomplete and unsatisfactory.

As the Committee found, the qualifications and abilities of some personnel of the Society were, at best, questionable.

As the Committee found, the relationship between the Society and other agencies and services in the community was not satisfactory. The Society did not involve such agencies or services in Kim's case.

As the Committee found, the overall management of the Society was not satisfactory. There were problems of morale.

As the Committee wrote, Kim's case might not have been the only case within the Society which had the potential for tragedy because of the organization and operational procedures of the Society.

As the Committee found, the Ministry did not fulfill its various obligations under The Child Welfare Act.

As the Committee found, the services of a solicitor were needed by the Society.

As the Committee found, the Society and its personnel are not alone in bearing responsibility for Kim's death. Others share that responsibility with the Society and its personnel.

Mr. Heath, limiting his comment as being applicable only to the events of June 17, 1975, said that the intake work of the Society was satisfactory. From his subsequent remarks I am satisfied that what was done by the Society on June 17, 1975 was only a small part of what should have been done on that and subsequent days to constitute an adequate and complete procedure to effect the intake of a case by the Society.

When asked, he agreed that, having regard to her brief visit to see Kim, Mrs. Saul had given Mrs. Harvey a "rather perceptive" report. In his opinion Mrs. Saul did not then have grounds to apprehend Kim under The Child Welfare Act.

In reviewing the handling of Kim's case and particularly the period immediately after Mrs. Saul's report to Mrs. Harvey on June 17, 1975, Mr. Heath noted that the Society then had information about Kim's earlier injuries. Some of the injuries had been suffered as early as in March, 1975. He said that as a normal part of the process of investigation and "intake" of the case the Society should have investigated the earlier injuries and their severity and circumstances. That should have been commenced immediately on June 17 or June 18, 1975.

Mr. Heath commented upon the lack of assignment of Kim's case until August 31, 1975 when it was assigned to Mr. Carter. Mr. Heath was concerned that even then, aware that there had been an unaccountable error or breakdown in its practice or procedure, no steps were taken by the Society to develop or amend its procedures to prevent any recurrence of such an error or breakdown.

The lack of assignment in June, 1975 was a very serious mistake by Mrs. Harvey.

Mr. Heath expressed no criticism of the actions of Mrs. Dick at the hospital on August 31, 1975.

He suggested that, generally speaking, child abuse cases should be assigned only to experienced workers. I infer he was not critical of the initial assignment of Kim's case to Mr. Carter in September, 1975, apart of course from his criticism that it should have been assigned in June 17, 1975.

Mr. Heath testified about his review of Mr. Carter's recording in the file for the period August 31, 1975 to February 29, 1976. In the opinion of Mr. Heath, as a professional social worker, Mr. Carter's whole recording "is one of concern and of signals about the adequacy of the mother [Jennifer Popen]."

Mr. Carter's recording forms part of the file in the Family Services Department with reference to Kim's case. That file is reproduced as Schedule 2-E to the Report. The pages were unnumbered, but, for ease of reference during the Inquiry numbers were placed on the pages each number being circled in red. That is why the transcript of the evidence upon the Inquiry contains references such as "red circled page 7." As reproduced herein those numbers and circles are black. Mr. Heath identified a number of items in that recording as being "warning signals." That portion of his evidence is transcribed as follows:

> " ...I gather Mr. Carter was initially involved from August 31st, 1975, to February 29th, 1976,...
>
> Q. Right.
>
> A. ...and in summary Mr. Carter's whole recording of this time period is one of concern and of signals about the adequacy of the mother. I believe he started using such phrases as 'she's a proverbial liar, etc.' This is already...
>
> Q. Can you pick some of those out of the transcript for us. I think His Honour would be interested to know what you as a professional social worker would pick out to be warning signals. Just take your time now.
>
> A. They're primarily contained in, again red circled section, or page 7, where Mr. Carter is indicating that he had caught the mother in lies on many occasions, describes her being as a young, inexperienced 18-year old mother, then expecting a second child. There's a reference to a 7-month old child who died in Jamaica, no cause of death given, very evasive...
>
> Q. The fact that the mother was young and inexperienced, that would be some kind of a signal but not a very strong one I take it?
>
> A. Not a strong signal.
>
> Q. The child...

A. The family background, I think this will come also subsequently, the admission of Mr. Popen to drinking problems.

Q. That's a warning signal?

A. Yes.

Q. The discussion that the mother had with Mr. Carter that another, an earlier baby died in Jamaica.

A. Right.

Q. That would be a warning signal?

A. Right.

Q. Go ahead.

A. The apparent isolation of this mother, she describes herself as not being wanted or liked by the extended family of the husband here in the Sarnia area. The so-called unaccountable blackouts during her pregnancy. Mr. Popen wasn't even aware of this. Initially there was denials even of the pregnancies.
We go on to February 27, 1976 and this is where I think it becomes much more meaningful on red circled 8, she starts talking about the family in Jamaica, you know, her being one of thirteen children and I think she was the third oldest. She walks home at age fourteen and finds her mother has disappeared. Had to quit school at Grade IX to take care of all the younger brothers and sisters, the youngest then being six. She cared for all the children by herself for almost two years. Father described as being very strict. I think the whole background leading up to the reason why she married, I think it's rather serious.

Q. The troubled family environment she had in Jamaica...

A. Right.

Q. ...could affect her personality and her approach to her children?

A. Correct.

Q. And a trained social worker should have been alerted by that, is that basically...

A. Alerted, yes, I don't think one would have absolutely concluded at that point in time that she was a classic case of an abusing mother, these are all signals.

Q. So many pieces of circumstance that eventually described a picture, is that what you're saying?

A. Correct.

Q. You've mentioned earlier that, and perhaps we can find it in the transcript that he referred to her as a 'habitual liar.'

A. It's in the body of the Family Recording on page, red circled 7, towards the bottom.

Q. So that in your review of the dictation and from your interview with Mr. Carter you concluded that there was a lot of circumstantial evidence there pointing to her as a possibly abusing parent?

A. Right."

Thus, even on the recordings in the files of the Society there was ample basis for a qualified social worker to be "alerted," that is to suspect that Jennifer Popen might have been an abusing parent. A social worker so "alerted" should then have been governed accordingly in the handling of the case.

Mr. Heath noted that from Mr. Carter's recording it was apparent that he had had "rather minimal" contact with the Popen family. This was so despite Mr. Carter's responsibility for the preparation of the application of the Society for custody of

Kim. In that regard he was responsible for conduct of the investigation of the case and the assembly of evidence to be presented in the Court.

When asked what Mr. Carter might reasonably have been expected to do to overcome or circumvent Mr. Higgins' restrictions upon or obstruction of his contact with the Popen family, Mr. Heath replied that he would have expected Mr. Carter to approach his supervisor, Mrs. Harvey. If Mr. Carter did not receive an adequate response from Mrs. Harvey, Mr. Heath would have expected him to approach the Local Director, Mr. Lovatt and, if still not satisfied, the Board of Directors of the Society. Again, if an adequate response was not forthcoming, Mr. Heath would have expected Mr. Carter to raise the matter in the Court upon one or more of the appearances at which adjournments were granted.

Mr. Heath was not aware that that was done. I am satisfied that Mrs. Harvey was aware of Mr. Carter's difficulty, but she could not or would not assist him. Mr. Carter sought no assistance elsewhere.

Mr. Heath acknowledged that problems within the Society could have been created if Mr. Carter, not satisfied with Mrs. Harvey's response to his problem of access to the Popen family, had chosen to speak to Mr. Lovatt. To do so he would have had to "go over the head" of Mrs. Harvey, his Supervisor.

Mr. Heath acknowledged that the situation then existing within the Society might have made it difficult for Mr. Carter to approach Mr. Lovatt. Mr. Lovatt had delegated almost all of the operation, except financial matters to Mrs. Harvey. Nevertheless, Mr. Heath felt that in any structure there should be a line of appeal beyond one's immediate supervisor. He said Mr. Lovatt retained some involvement in programme matters and in the making of some decisions.

Thus Mr. Heath felt Mr. Carter should have approached Mr. Lovatt when Mrs. Harvey declined to assist him in overcoming the obstacles and even advised him to abide by Mr. Higgins' strictures.

Mr. Heath had found that the sort of group discussion that might arise from a subordinate taking a matter beyond his or her immediate supervisor did not generally occur within the Society.

Mr. Heath's opinion was that, failing a satisfactory solution by other means, a knowledgeable supervisor would have spoken with the solicitor or court worker for the Society with a view to asking the Court to rule upon the matter. In this instance Mrs. Harvey was both supervisor and court worker. She should have advised the Court of the matter.

Mr. Heath testified that Mr. Carter's recording was "basically a negative report."

Mr. Heath said that the Farina Committee were aware of the "spontaneous meeting" in February, 1976 at which Police Constable Wyville, in Mr. Carter's presence, expressed to Mrs. Harvey extreme concern about the possibility of Kim's return home and spoke the words of tragic prophecy to the effect that if Kim were returned she would be dead within months.

In Mr. Heath's opinion the presentation of evidence upon the Society's application for wardship of Kim was "most adequate." That evidence included the abuse of June, 1975. Mr. Carter had arranged for the attendance of witnesses.

Mr. Heath's understanding of the reasons for judgement expressed by Judge Nighswander when he placed Kim in the care of the Society was that it was:

> "an exceptionally strong summation and cautioned...the Society...as to how careful they should be before making any move to return that child to the parental home."

Mr. Heath's testimony in this area concluded as follows:

> " ...There's no doubt that the caution was there...
>
> Q. In any event...

> A. ...while the child might go home in the future His Honour wanted assurances that the Society would present a plan or be assured in its own mind that the child was adequately protected. It's a strong judgement, it's a strong summation.
>
> Q. So you feel that the fact the Judge in spite of the Society asking for two months, granting on his own six months wardship plus his concern that he expressed in his judgement should have alerted the Children's Aid Society again?
>
> A. Correct."

It is interesting to compare Mr. Heath's assessment of Judge Nighswander's judgement with Mr. Higgins' assessment of it. They are surprisingly similar in tone. Mr. Higgins felt that Judge Nighswander was indicating his desire to hear from Annals Popen in the Court before Kim was returned. In effect he felt that Judge Nighswander meant that Kim was not to be returned to her home without the consent of the Court.

Mr. Heath continued his testimony to discuss what he described as "the lack of adequate transfer" of Kim's case from Mr. Carter to Mrs. Lo. He spoke of differing information received by the Farina Committee from Mrs. Harvey and Mr. Carter. Mrs. Harvey had said she had informed Mr. Carter that the case was to be transferred from him and the reasons therefor. Mr. Carter had said he learned of the transfer "literally...on the run" on the afternoon of the wardship hearing on February 25, 1976 by an almost casual remark by Mrs. Harvey who told him the transfer was made "for ethnic reasons." The Committee were unable to understand that.

Mr. Heath described the usual or recommended procedure for transfer of a case and commented upon the transfer of Kim's case. He said:

> "A. In any good Society when a case is transferred for any reason usually a notification is given to the chosen or subsequent worker. It is normal procedure for at minimum the supervisor and the two

> staff members, meaning the one who presently has the case and the one assuming the case and indeed if there's a second supervisor, depending on the structure of the agency, the case record is brought up-to-date, it is reviewed by the second worker and that at minimum there would be a case conference to review the goals and objectives, clarify any points, that's for any case. I would suggest in a child abuse case that would even be more formally contracted in terms of the acceptance of the transfer. A review of all the evidence back, and in this case it would probably be the evidence back to March of 1975. Again, had it been proper procedure in an agency such as this size I think it might have tipped the Society off once again, were there other agencies that we should be involved with. In a child abuse case you would normally bring those other agencies in, the original referring agency, and in a case such as this, public health. Perhaps, the family doctor: this wasn't done. I gather the file was just quickly brought up-to-date and handed to the second worker.
>
> Q. With no conference at all?
>
> A. No conference at all."

The only explanation for the transfer given to the Committee was that it was "for ethnic reasons." Mrs. Harvey did indicate that Mrs. Lo would have more time for the case than would Mr. Carter who had a heavy case load. She indicated Mrs. Lo would "relate better" because she was a young mother.

Mr. Heath testified that the Society's files showed that Mrs. Lo visited the Popen home often. Mr. Heath's concern was the nature or structure or purpose of those visits. He expressed it as follows:

> " ...It wasn't the amount of visiting that was in question, it was the whole purpose of the supervisory visits. I think Mrs. Lo

> might have visited twice a day, and with all due respect I think the same tragic death might have occurred."

Mr. Heath related the problem in those visits to "the decision-making around the assignment to Mrs. Lo, the lack of safeguards...when the child was returned, the lack of proper decision-making leading up to that decision which came in early May 1976."

Mr. Heath was asked to comment upon Mrs. Harvey's testimony to the effect that, even prior to February 25, 1976, she had made up her mind that Kim would be returned to her parents. He responded to that and supplementary questions as follows:

> "A. Considering that the Judge hadn't even rendered decision around the wardship, considering all the evidence that was in hand, considering the fact that no plan had been implemented to indicate an improvement on the part of the mother and the father, considering, as I mentioned, some of the beginning danger signals, considering the cautions of Mr. Carter and Mrs. Kirby and I gather Mrs. Cecile indirectly, and the Police Department, I fail to comprehend how she could have been considering a return at that point. I fail to consider even what I would suggest was the short period of wardship that the Society requested...
>
> Q. Right.
>
> A. ...without setting other safeguards.
>
> Q. Putting it another way, is there any positive reason why she would at that point consider it proper to return the child? Is there any reason why she would be anxious to return her at that stage?
>
> A. It would be beyond my comprehension at that stage."

I am satisfied that Mr. Heath and the Farina Committee have correctly assessed this area of the case. His straightforward comment is deserved.

I share the views he expressed in that series of answers.

Mr. Heath commented upon the handling of the case from February 27 to May 26, 1976. He acknowledged that the Committee's review was limited to an examination of the Society's files, interviews with Mrs. Harvey and a telephone conversation with Mrs. Lo.

Mr. Heath spoke in straightforward language. His testimony included the following comments:

> "With all due respect to Mrs. Lo, the impression that comes out of this case record is that, if I could be so blunt, she was in over her head. I don't think she knew what she was coping with. We never got any flavour that aside from a very vague way that she knew why she was going back from one week to the next.
>
> Q. She was a very new worker, of course.
>
> A. Correct. Inexperienced in children's aid work in general...
>
> Q. She had only got --
>
> A. ...and child abuse in particular."

That is as much a criticism of the Society and Mrs. Harvey as it is of Mrs. Lo.

Mr. Heath spoke of the meeting in early May, 1976 and the rationale of the decision made at that time. The Farina Committee gained the impression that Mrs. Harvey and Mrs. Lo had earlier decided that Kim would be returned; the only question remaining when that meeting convened related to the time of that return in relation to the anticipated birth of Jennifer Popen's next child. No one attending that meeting indicated to the Committee that, if Kim were to be returned in the near future, safeguards would be built into the arrangement for her return. Later there was some suggestion that attendance at Alcoholics Anonymous and the Parent Effectiveness Training Course would suffice.

When asked if the Committee had learned if there had been any discussion or consideration of "danger signals" such as he himself had mentioned in testimony, he replied:

> "A. If they were considered, again I, with all due respect, at that May 7th meeting they seemed to have been discarded. There was apparently - the child's reaction actually to visits in the office setting and prior to the return home, by this time we have a bit more information about Mrs. Popen's own tragic background as a child in Jamaica. By this time we have in hand, I believe it's another exhibit, a reference to Mrs. Popen in a psychiatrist's letter concerning her husband on the criminal charges before the court, I might be able to make reference..........................
> ....
> ....
>
> Q. I think when we rose, Mr. Heath, you were looking at Exhibit, for the record I better put it down again, Exhibit 26, Dr. Curtin's report prepared for the Probation Office when Mr. Annals Popen was being sentenced - prior to his being sentenced on the child welfare charge. Was there something of significance in there that should have indicated a warning?
>
> A. There are two points, and my understanding is that I am positive I read this in conjunction with the pre-sentence report which the Society shared in preparation with George Brouwer, and the two things are without repeating the whole sentence...
>
> 'He and his wife are perfectly agreeable that the Public Health Nurse and the Children's Aid visit their home any time in the future to check their treatment of the child.'
>
> Then this is the important sentence:
>
> 'Even though all these things would surely minimize the danger in the future I am

> really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen.'
>
> Then there is a short second last paragraph:
>
> 'In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it.'
>
> That information would have been in the hands of the Society approximately three weeks after granting of wardship, approximately five weeks prior to the conference to return in early May, 1976."

Mr. Heath said that the Committee had reviewed all of this, including the "danger signals," with Mrs. Harvey who said, in effect,

> "we knew it was Mrs. Popen who was doing the abusing all along."

Mrs. Harvey did not indicate to the Committee that the withdrawal of the charge against Jennifer Popen created any confusion or misled her.

Mr. Heath said that the report from the Society to the Ministry following the Ministry's request dated April 14, 1976, restated that comment by Mrs. Harvey in a somewhat different way.

The Committee had questioned Mrs. Kirby as to how strongly she and Mrs. Archer had presented their views, the views of the Children's Services Department, at that meeting early in May, 1976. Mr. Heath gained the impression that they felt they should not pursue the matter with Mr. Lovatt. The Committee concluded that it seemed very normal to Mrs. Archer and Mrs. Kirby within the Society that their opinions would be overruled by the Family Services Department and particularly by Mrs. Harvey.

The basis for that approach seemed to be that the Children's Services Department would defer to the Family Services Department because the latter would have more information about the situation within the family. But Mr. Heath said that, in Kim's case, Mrs. Kirby had been involved in most of Kim's visits with her parents. He said she had recognized "danger signals" and was aware of Kim's negative reaction to her visits with her parents. He felt Mrs. Kirby had "some very valid information." I presume he meant it was information which should have been considered as a factor in any discussion as to whether or not Kim should be returned to her home.

Mr. Heath's opinion, strongly held, was that all opinions should have "equal weight" in a conference considering the return of a child. I do not apply that literally, but I do assume he meant that all opinions should be considered and that an otherwise valid opinion should not be dismissed, ignored or given less weight solely because its source was the Children Services Department of the Society rather than the Family Services Department.

In considering the relationship between the two departments of the Society and the deference shown by the Children's Services Department to the Family Services Department, I note Mr. Heath's testimony that the Farina Committee had concluded that Mr. Lovatt had really delegated to Mrs. Harvey almost all of the operations of the Society and that, in actual case management, Mrs. Harvey was in charge in terms of the Family Services Department. The staff of the Society would surely have been aware of that and would regard Mrs. Harvey as the dominant authority in case management matters.

Mr. Heath was not prepared to agree entirely with Mrs. Kirby's testimony that Kim's reaction after visits with her parents was not necessarily a "danger signal" and might have been a normal reaction to any disruption of her routine. Mr. Heath felt that the incidence of prior abuse would be a factor to be considered in any such assessment as to whether or not Kim's reaction was a "danger signal." Mr. Heath enlarged upon that by mention of the observation as to Jennifer Popen's rather rough handling of Kim and her lack of "any awareness of exactly what she was doing in terms of embracing her child." That observation had been made prior to May 6, 1976 and was recorded.

Mr. Heath also noted the short time which elapsed from March 29, 1976, when Annals Popen was placed on probation, to May 6, 1976, when it was decided that Kim would be returned home before the birth of the next child.

He pointed out that the Parent Effectiveness Training Course on which the Society placed so much weight had begun only ten days prior to May 6, 1976 so that Annals Popen and Jennifer Popen would have attended only one or two sessions of that Course by that time.

He spoke of the scant information available as to Annals Popen's attendance at Alcoholics Anonymous.

Mr. Heath said that the decision to return Kim was made on "the sparsest of evidence". He was too kind. There really was no evidence to justify the decision.

He then moved on to suggest that even if the basic decision to return Kim could be defended, it was not supported by any consideration of conditions or terms which should have been built into it in an effort to protect Kim's safety. He suggested that appropriate safeguards might have included consultation with the family physician, with The Lambton Health Unit and with the hospital prior to Kim's return. That would be intended to ensure that Kim was examined regularly by medical personnel after her return. That was not done. Nor was there any expectation that Kim would be physically stripped and examined by Mrs. Lo. Mr. Heath felt that all of that should have been arranged as a matter of normal and good practice prior to Kim's return so that the Society might be ensured and aware of the co-operation of others after her return.

Mr. Heath observed that the Society's file contained only one reference to contact by the Society with the Probation Service of the Ministry of Correctional Services and those supervising Annals Popen's term of probation. Mr. Brouwer had contacted the Society when he was preparing the pre-sentence report, but thereafter the only contact mentioned was by a telephone call. Mr. Heath thought that telephone call was in mid-June of 1976.

I have examined the recordings in the Family Services Department file which form an exhibit upon the Inquiry. I am unable to find any reference to a telephone call to Mr. Brouwer in June or at any time. In her testimony upon the Inquiry Mrs. Lo said she had telephoned Mr. Brouwer.

Mr. Heath testified that the Committee were appalled to find that, in that telephone call, Mrs. Lo indicated that the Society would be lessening its supervisory contacts when Kim's wardship came up for review in August, 1976.

The Committee understood that Mrs. Lo informed Mr. Brouwer that the Society would be suggesting that the Court terminate its order granting wardship of Kim to the Society. Mr. Heath noted especially that Mr. Brouwer had arranged for Mrs. Maughan to assist him in supervising Annals Popen's term of probation so as to compensate for that lessening of supervision by the Society. Although Mrs. Lo was aware of Mrs. Maughan's role she had not contacted her in any way.

Mr. Heath was asked if there was a lack of communication between the Probation Service and the Society. He replied

> "well, that's putting it mildly."

He enlarged upon that to say

> "There seemed to be a lack of communication all the way around -- internally and externally."

He said the Society should have been working with the Probation Service, The Lambton Health Unit and the family doctor. There may have been others, but the Society should have worked with "those at minimal."

The Committee found no evidence that any plan for Kim's safety was formulated prior to her return home.

Mr. Heath said that the Society's worker visiting the Popen home after Kim's return should have had no qualms about undressing Kim and examining her for any external sign of injury.

He said that normally a children's aid society having wardship of a child would arrange for periodic medical examinations of that child while the child remained in its care even though the child was living at home with his or her parents. He said that was especially important in any case where there was a history of abuse of the child.

In fairness to Mrs. Lo, Mr. Heath said she would have been expected to see some of the external or visible signs of injury, such as bruises, but not injuries of other types which Kim suffered. In that regard he said that Mrs. Lo should have turned to "allied health services in the community," such as The Lambton Health Unit.

Mr. Heath said that a children's aid society should be careful to call the public health nurse into case conferences so that that nurse might be specifically requested "to supplement, complement, to share with the supervision" of a case involving an abused child.

Mr. Heath stated that

> "no children's aid society can do an adequate job generally speaking without the active co-operation and collaboration with its public health nurses."

Mr. Heath noted that the later involvement of The Lambton Health Unit after the birth of Kim's younger sibling came about as part of its normal programme of post-natal visiting. It was not a response to any request from the Society and it did not relate to Kim.

Mr. Heath referred to two portions of the recording in the Society's file. Under date of May 27 to August 4, 1976 in the file of the Children's Services Department he found the following:

> "Kim continued to have bad days and good days and there was criticism by the father of the mother if Kim had a bruise which she did occasionally from bumping into things. The bruises were checked and were the usual type for a child of this age. They were both fearful of the child being removed

> again by the CAS despite the worker's reassurance that they were doing well."

That was a portion of what Mrs. Harvey had placed in that file after Mrs. Kirby had completed her recording on May 27, 1976. That portion was based on Mrs. Lo's recording in the file of the Family Services Department under date of June 17 to July 6, 1976 where she had written:

> "Since Kim was an active child, she often bumped into things and hurt herself. Since Mr. Popen was not happy about it and thought Jennifer should watch her more carefully. He said he did not mind if supper was not ready when he was home from work but Jennifer should see to it that Kim did not get hurt. He was afraid that C.A.S. was going to take Kim again.
> Several days later I was able to confront Mr. Popen with this, and reassure him that we fully understood children did get hurt accidentally, but he should be practical and realize that Mrs. Popen could not keep her eyes on Kim all the time."

Mr. Heath agreed with counsel upon the Inquiry that Mrs. Lo's recording indicated that, by telling Mrs. Lo of Kim's bruises and Annals Popen's fears, Jennifer Popen was able to manipulate Mrs. Lo so that she became Jennifer Popen's ally to reassure Annals Popen. Mr. Heath enlarged upon that to note that Mrs. Lo had gone further than that and, under date of July 7 to July 23, 1976, wrote:

> "On my last visit we talked about Jennifer's fear towards C.A.S. Realizing that I was able to acknowledge her feelings, she honestly admitted it and we spent quite a while discussing the subject. It was indicated that C.A.S. is not asking for either a supervision order when Society wardship expires. I will be visiting on a friendly and supportive basis."

Mr. Heath felt that the mere presence of bruises which appeared to be "normal," to use his adjective, even coupled with the parents' fear of removal of a child by a children's aid society, would not constitute a danger signal to which the children's aid society should respons in most cases. However, when such bruises and fear are associated with a case in which the child has been abused in the past they do give the children's aid society an opportunity and cause to have the child examined medically.

He pointed out that in Kim's case the Society did not grasp that opportunity. Kim was not examined by a medical doctor acting on the instructions or request of the Society.

Mr. Heath agreed that the Society's supervision of Kim's care from May 27, 1976 until her death was "completely inadequate." That inadequacy of supervision had many features. Mrs. Lo did not properly examine Kim. She did not call upon any other community service or upon a medical doctor to perform a medical examination of Kim. Mrs. Lo had not been instructed to make any such examination or to have it done.

He then reviewed some other portions of Mrs. Lo's recording in the file of the Family Services Department. They had been initialled by Mrs. Harvey.

Under date of March 18, 1976 she had written:

> "He [Annals Popen] had had a psychological assessment done and the result would be sent to the concerned personnel. Due to the fact that Mr. Popen no longer has drinking problems..."

Mr. Heath noted that entry was made even before Annals Popen was sentenced on March 29, 1976 and less than a month following the order made on February 25, 1976 whereby Kim was placed in the care of the Society. He said:

> "How they came to that conclusion [that Mr. Popen no longer had drinking problems] with no documentation totally escaped us [the Farina Committee]."

Under date of March 29, 1976 Mrs. Lo wrote:

> "Due to the positive results of psychiatry (sic) assessment it would indicate that Mr. Popen was not in need of psychiatric treatment."

That was not Mr. Heath's interpretation of Dr. Curtin's letter, a letter which Mr. Heath described as being "very cautious" and "very non-committing." I share Mr. Heath's assessment of Dr. Curtin's letter. Mrs. Lo's recording is not an accurate summary of that letter and what might flow from it.

Under date of April, 1976, after noting Annals Popen's attendance at Alcoholics Anonymous and his statements about feeling better "because he can control himself now" and his wishes for the future, Mrs. Lo wrote:

> "We have spent time discussing background for parents who physically ill treated their children. Such incidents do not necessarily happen to parents who don't love their children. When parents have reached their limit, no matter how much love they have for their children, they usually resolve their frustration and anxiety by falling back on their own background - in this case, severe physical punishment. Mr. & Mrs. Popen believe such a thing will not happen again since now they realise what caused it."

With reference to all of that Mr. Heath said:

> " ...There's no indication that they knew what had caused it. I would suggest that the recording and the interplay between the Society and those parents was so superficial I don't know how Mrs. Lo could have possibly come to such a conclusion that the parents were fully aware of the etiology that led to the abuse and were prepared and able to cope with any circumstances in future that would not lead to any other further abuse.
>
> Q. What you're saying is that Mrs. Popen never discussed with them or never admitted

> to them that she abused the child and that...
>
> A. Well, she just blandly...
>
> Q. Denied...
>
> A. ...agreed to agree with everything Mrs. Lo said."

I should add that there was no testimony to indicate that Mrs. Lo or anyone else in the Society "knew what had caused it" or had endeavoured to learn its cause.

Mr. Heath felt that a "crucial" portion of Mrs. Lo's recording was to be found under date of July 7 to July 23, 1976. There she had written the following:

> "For the last couple of times Jennifer appeared very tired, cold and distant to worker. Jennifer looked very unhappy that she was not able to share it with me as to what was bothering her."

Then followed a sentence I have already quoted and one which Mr. Heath now called "the clincher." It was as follows:

> "It was indicated that CAS is not asking for either a supervision order when Society wardship expires. I will be visiting on a friendly and supportive basis."

Mr. Heath's opinion was that, combined with what he had earlier described as lack of meaningful interplay during Mrs. Lo's visits,

> "these signals should have said something to her [Mrs. Lo]."

He said Mrs. Lo was naive in her relationship with Jennifer Popen. She missed the danger signals. She wanted to see good in Jennifer Popen. He completed that response by saying:

> "...That's the irony of it. I think in her attempt to be supportive and her attempt to

> see some good...(tape inaudible) I think she lost sight of the basic mandate of that Society to protect the child."

While he testified upon the Inquiry, Mr. Heath was advised by counsel of portions of the testimony of Mrs. Kuly of The Lambton Health Unit. She had spoken to the Sarnia Police Force in June, 1975 after receiving a report that Kim may have been abused by Jennifer Popen. She wanted to learn if the Sarnia Police Force and the Society were involved. She was told of Mrs. Saul's visit with the police to see Kim. She was told there was no evidence of abuse, but Jennifer Popen and Annals Popen had come in during that visit and were angry and upset. The police told her of an earlier incident in which Kim suffered a broken arm. Thereupon, on June 23, 1975, she telephoned the Society and was informed, she thought by Mrs. Dick, that the case had been assigned to Mr. Carter, a long term worker. She had visited the Popen home because of Mrs. Dick's encouragement to do so.

Mr. Heath said he was not aware that there had been that contact by The Lambton Health Unit. He regarded Mrs. Kuly's testimony as supportive of his opinion that Kim's case should have involved the co-ordinated efforts of the Society and others. He thought that the telephone call to the Society on June 23, 1975 should have prompted the Society worker to whom Mrs. Kuly spoke to go to the case file to ascertain what had resulted from the intake proceedings of the previous week.

Mr. Heath testified that, from the recording in the Society's files, he gained "the very distinct impression" that even on learning of Kim's death the Society "seemed oblivious that it would have been abuse." He said:

> "one gets the impression that they indeed might have believed it was an accidental death."

He mentioned specifically Mrs. Lo's recordings under date of August 11 and August 12, 1976. They are as follows:

> "Early in the evening, a call was made by Mr. Popen's sister-in-law, Grace Popen,

> saying Kim had died of a fall from the patio. Jennifer wanted me to go over. In the meantime, another call was received from Sarnia Police requesting me to go to Sarnia General Hospital. At Sarnia General Emergency I identified the child be to Kim Popen. Later on, as the parents were talking to the detectives, a message was left for the Popen's to call me again if they needed me.
>
> Home visit. Mr. Popen was at funeral home arranging the funeral. Jennifer looked tired and strained. She said she did not sleep at all last night. She stated that the child first fell from her high chair yesterday afternoon and said "hurt! hurt! hurt!" but could not tell Jennifer where it hurt. Since then Kim had been bumping into things as if she was in a daze. The child was seen leaning on her left leg when walking. Judy Vandenberghe said she also noticed the child appeared to be a little dizzy. After supper, Jennifer put Kim out on the back porch, a porch (4 sic) 3 feet high, without any railings, to play. Several minutes later, she found the child had fallen from the patio and was unconscious. Not long after they reached the hospital the child died.
>
> Kim was left with an 18 year old babysitter Debbie Ginn while Jennifer was in hospital having Karie. The only persons Kim had ever been left alone with were Mr. Frances Kameka and his mother. Detectives Ross and (Haye sic) Walters were investigating into this situation."

In passing I note the two changes in the recording which are marked in the above quotation. I have looked at the original document filed. The figure "4" and the name "Haye" have lines drawn through them and have been replaced by the figure "3" and the name "Walters" which are written in pencil without any indication as to when or by whom the changes were made.

More disturbing is that the change of the police officer's name from "Haye" to "Walters" apparently occurred after the Investigator for the Inquiry had received from the Society photocopies of the pages in the file which remained in the possession of the Society. The Investigator retained the photocopies for the purposes of the Inquiry. The photocopy in the possession of the Inquiry shows only the change of the figure "4" to "3."

That willingness and ability of someone to amend documents and records even during the Inquiry reinforces my assessment that the records of the Society are not reliable. The original document was produced from the Society's files during the Inquiry and was received as an exhibit.

Mr. Heath noted the references to "a fall from the patio," and the statements "[Kim] first fell from her high chair," "Kim had been bumping into things" and "[Kim] appeared to be a little dizzy." The recording does not mention abuse. He said that he understood that at about the same time Mrs. Lo had said Kim's parents would "need an awful lot of support," leaving the impression that maybe her death had not resulted from abuse.

Mr. Heath's observation was that all of that seemed "consistent with the lack of perception all the way through the handling of the case."

Mr. Heath was asked to comment upon the action of the Society relating to Kim's younger sibling after Kim's death. He was not aware of what reports, if any, the Society had as to the established cause of Kim's death. He continued his testimony to say

> "but in view of what they did know there was gross hesitation on their part to take action, to bring into care the younger child, Karie."

He was aware that the Coroner, the Crown Attorney and The Lambton Health Unit, whose Director was the Medical Officer of Health, had all involved themselves in the case before the Society apprehended that younger child two days after Kim's death.

Mr. Heath had spoken to Mrs. Harvey about that incident. From her and others he understood she had felt that there were not sufficient grounds to justify or authorize apprehension of the younger child under The Child Welfare Act.

His own opinion was that there were "most adequate grounds". He said Mrs. Harvey should have acted under that portion of section 19(1)(b) of The Child Welfare Act which states that the expression "child in need of protection" means, inter alia,

> "(xi) a child whose life, health or morals may be endangered by the conduct of the person in whose charge the child is."

That was an extension of the lack of perception he had mentioned earlier.

When Mr. Heath was asked to comment upon the contents of the Farina Committee's report his attention and responses were directed only to the second version.

His decision not to sign that version was based on the advice of the Ministry's solicitor and some concern that the Committee's report might, in some way, interfere with or bias the Inquiry which had been announced in the period between the two versions.

In my view the Ministry's solicitor was overly cautious. I cannot see how the Committee's report could any more "interfere" with or bias this Inquiry if it were signed by Mr. Heath than if it were not signed by him. Regardless of any report the Committee may have made it must have been clear that, having reviewed the case for the Board of Directors of the Society, the members of the Committee would be expected to testify upon the Inquiry and to express their findings and opinions.

Mr. Heath fully endorsed the contents of the Committee's report. His testimony enlarged upon some aspects of it.

He testified that from its interviews with members of the staff of the Society, particularly Mr. Carter and, to some extent, Mrs. Kirby, the Committee felt there was, within the Society, a "great ignorance" of The Child Welfare Act.

In his opinion Mrs. Harvey was not sufficiently knowledgeable to present matters adequately in court.

Mr. Heath mentioned some comment by Mr. Lovatt which Mr. Heath felt was in error. That comment was to the effect that, as the Society began proceedings in the Family Court only in September, 1975 to obtain an order placing Kim in the care of the Society it could not, in support of that application, present any evidence of prior neglect or abuse.

I share Mr. Heath's view that Mr. Lovatt was in error in any such comment. Evidence of prior incidents of abuse would be relevant and important upon the hearing of the Society's application.

Thus the Farina Committee found lack of knowledge of The Child Welfare Act and court procedure in four quite senior and experienced members of the staff, including the Local Director and the supervisor of one of the two departments in the Society. That latter was also the Society's court worker.

The Committee's view of Mrs. Harvey's knowledge and expertise in court-related matters is all the more interesting and telling in light of Mrs. Harvey's statement to Mrs. Farina that I have mentioned elsewhere in the Report.

The Society was the only one of fifty children's aid societies in Ontario, with one possible exception, which did not choose to send any staff to a training seminar held in the fall of 1975. That seminar, arranged by the Ontario Association of Children's Aid Societies, was for the court workers of the children's aid societies. It was intended to assist them in their work in court and in matters related to court.

When Mrs. Farina noted that the Society had not responded to an invitation to send someone to that seminar, she telephoned. In Mr. Lovatt's absence she spoke with Mrs. Harvey who stated that no one from the Society would attend. Mrs. Harvey went on, in that telephone conversation, to tell Mrs. Farina that the Ontario Association of Children's Aid

Societies had nothing helpful to offer to the Society.

That was a broad statement. It appears to encompass a broad range of child welfare services. Even if confined only to the particular seminar it related to an area where the Society was woefully weak.

Mr. Heath went on to say that the Farina Committee sensed a general climate about the Society which was not satisfactory. He spoke of everything seeming to be done "on a hit and miss ad hoc basis." He spoke of a lack of proper notes and of regular conferences in preparation for appearances in court. The method of gathering evidence was not satisfactory. The staff were not clear as to "the things they should be aware of."

The Committee gained the impression that, when Mr. Higgins told Mr. Carter not to speak with Jennifer Popen and Annals Popen, the Society simply accepted his dictum and did not consider pursuing the matter.

Mr. Heath's opinion was that a children's aid society does not require the services of a solicitor in every application for wardship. He stated equally strongly that in every contested application for wardship the children's aid society should be represented by a solicitor. That was particularly so in a case such as Kim's. He was confident that any expenditure for such legal services, whether or not it was a part of the approved budget, would not be questioned by the Ministry even if it caused an deficit at year-end.

He said that most children's aid societies now do have a solicitor on staff or on retainer.

Mr. Heath said Mrs. Harvey's approach to Mr. Higgins to join the Board of Directors of the Society was "a highly unusual practice." The Committee was unable to ascertain that either Mr. Lovatt or Mrs. Harvey were authorized to approach prospective members of the Board of Directors.

In commenting upon the criticism of the administration of the Society at page twelve of the second version of the Committee's report, Mr. Heath explained that the criticism was particularly of Mr. Lovatt, but also was of the supervisory staff.

He said that the Committee received

> "a consistent message from all staff, all levels of staff, whether it be family service or child care or clerical staff, about the lack of written policy, the lack of procedures, the lack of direction, the lack of proper communication channels... between departments and departments, between them and Mr. Lovatt and in turn on to the Board [of Directors]. We found frankly a very committed staff, a staff that just seemed to be groping I think for direction."

When the Committee asked for the policy and procedure manual Mr. Lovatt produced for them two documents entitled "Policies in Regard to Family Services" and "Policies for Child Care Services". Those documents have been reproduced as Schedules 2-L and 2-M to the Report. Mr. Lovatt acknowledged to the committee that these documents were "quite out of date" and that "policy statements were being updated." Mr. Heath did not know if the new documents had been prepared in draft form.

Mr. Heath said that these two documents produced by Mr. Lovatt were largely comprised of excerpts from The Child Welfare Act "and then beyond that they say next to nothing." He felt that they might serve as an introduction to something worthwhile.

When Mr. Lovatt gave these documents to the Committee, Mr. Heath thought that Mr. Lovatt had misunderstood the Committee's request. So he asked for the memoranda on various subjects which he felt would have supplemented what was produced. Mr. Lovatt said there were no such supplementary materials.

Mr. Heath gained the impression that any expression of policy developed or adopted by the Board of Directors was mentioned only in the minutes of meetings of the Board of Directors where it remained. Such information was not extracted from the minutes of meetings to form a clearly identifiable policy statement maintained in a regular fashion.

Mr. Heath testified that responsibility for preparation of written policy statements and procedures in a children's aid society rests largely on the management group composed of the local director and supervisory staff. He suggested that, in a society the size of the Society, the local director is responsible for the formulation of policy statements regardless of the source of the original suggestion. That source could be anywhere in or out of the children's aid society. Once formulated the policy statement would be considered and dealt with by the board of directors.

Mr. Heath said that the Committee was given the impression that the morale of the staff of the Society had been low for some time. In commenting upon the final paragraph on page thirteen of the second version of the Committee's report he mentioned the fear that two clerical workers had when asked to speak with the Committee. He felt the fear of reprisal arose out of the situation of poor staff morale. There had been no suggestion of direct threats of reprisal for appearing before the Committee.

Mr. Heath was asked to explain the first paragraph on page fourteen of the second version of the Committee's report. After the Committee interviewed Mr. Lovatt, they were left with the impression that Kim's was the first tragic death in the history of the Society. Mr. Heath acknowledged that perhaps it was. But in its continuing review the Committee began to hear of lack of direction and lack of procedures. That was general. In specific reference to Kim's case they heard of the absence of certain practices and of practices which were undertaken but "were very sloppy ones."

One member of the staff bluntly informed the Committee that the tragedy could occur again. She supported that statement by documenting a serious neglect case in which the Society had failed to act. That case had arisen after Kim's case. The first call about it to the Society was received in July, 1976 shortly before Kim's death.

When asked to comment upon the references to the Ministry in the Committee's report, Mr. Heath said the Ministry had not picked up or pursued the matter of strained relationships within the staff and management of the Society. That was despite two visits by Mr. Charko of the Ministry's staff. Those visits were supposed to deal with those strained relationships.

In that connection he said that he, as the Local Director of the Children's Aid Society of the County of Huron, became aware of the discontinuation of the visits to children's aid societies by "readers" from the Ministry. There had been no formal notification of that discontinuance.

He said that visits by such "readers" might have been helpful to Kim. Depending upon the subject matter of their visit they might have noticed the failure to comply with the Regulations made under The Child Welfare Act or they might have noticed matters related to her apprehension by the Society or to the process of decision-making in her case. They might have observed the low morale, the dissension and the lack of communication within the Society.

Mr. Heath said that very few of the staff of the Society were aware of what was happening in Kim's case. That implied that not many of the staff could have given the "readers" information on Kim's case.

Mr. Heath spoke of the dependence of the Ministry upon the Local Director of the Society, Mr. Lovatt, for information on a case such as Kim's. He spoke of a visit by Mr. Charko to the Society in late 1977 just before Kim's case became a matter of public knowledge and interest. While Mr. Lovatt or staff personnel had expressed disgruntlement about the Society's not being allowed to speak to a case coming to court, no one identified the case. Mr. Heath felt that, if the Society were concerned about the case and the possibility of adverse publicity, it should have sought aid from the Ministry at once.

It is of interest to note that the disgruntlement related to "a case coming to court." There apparently was no mention of any concern as to the handling and disposition in early 1976 of the charge against Jennifer Popen and Annals Popen under section 40 of The Child Welfare Act.

Upon the Inquiry the criticism expressed by some of the Society's personnel relate to the proceedings in the Family Court during February and March, 1976. There was no objection to any other matter in any court in late 1977.

In expressing its comments upon the community the Committee did not think that the community of the City of Sarnia and the County of Lambton was much different from other communities in its approach to cases of child abuse and reports of instances of child abuse.

Mr. Heath's assessment of the Society was expressed as follows:

> "A. You see, there's no rating where I get the impression that we could categorize societies by A, B, C and D; it was certainly not operating according to the standards, the professional standards that I would have concluded to be adequate."

He felt that something drastic must have occurred within the Society after 1973, if Mr. Mainville, then of the Ministry, found the Society's operation in 1973 to have been satisfactory. Mr. Mainville's testimony upon the Inquiry was to that effect. Mr. Heath knew Mr. Mainville and respected his professional opinion.

Mr. Heath mentioned that Mr. Lovatt, having delegated much authority to Mrs. Harvey, had retained some relationship with some matters of programme and decision-making.

He said that in his opinion Mr. Lovatt, as Local Director, was responsible for ensuring that appropriate conferences of staff were held to enable meaningful discussion of cases.

He felt that Mr. Lovatt was also responsible for resolving any differences of opinion that might arise during or out of any such discussions.

Mr. Heath concurred in what he believed was a recommendation in the Report of The Task Force on Child Abuse, the Garber Report of June 19, 1978, that cases of child abuse should be assigned only to experienced workers.

He was prepared to accept that Mrs. Harvey's observation that Mrs. Lo would have more time than Mr. Carter was a valid factor when considering her assignment of the case to Mrs. Lo.

In his view, Mr. Carter's experience was the key factor and outweighed Mrs. Lo's freedom of time and the other matters Mrs. Harvey had mentioned as having influenced her decision to assign the case to Mrs. Lo.

He observed that, in keeping with a recommendation of the Garber Report, Mr. Carter might have been relieved of some of his more ordinary duties so as to leave him more time to devote to Kim's case.

Mr. Heath was not prepared to accept Mrs. Harvey's suggestion that Mrs. Lo's sex and age were important factors in her decision to assign Kim's case to Mrs. Lo. He felt that the fact that Mrs. Lo had a child of an age similar to Kim's might have created some sort of common bond between Mrs. Lo and Jennifer Popen, but he did not feel that was an important consideration in any question of case assignment.

In Mr. Heath's opinion, "truly close supervision" of Mrs. Lo by Mrs. Harvey might have overcome Mrs. Lo's lack of experience. I infer from his response to examination in this area that, in his opinion, Mrs. Harvey did not provide that "truly close supervision" of Mrs. Lo which might have overcome her lack of experience.

Mr. Heath said that, numerically, Mrs. Lo's visits to the Popen home appeared to be satisfactory. He had been unable to establish the exact number of visits. He had criticism of both Mrs. Harvey and Mrs. Lo in relation to what Mrs. Lo did or observed during those visits and in relation to the interpretation of Mrs. Lo's observations.

Mr. Heath had read Mrs. Lo's recording in the Society's files wherein she wrote of those visits. He had noticed matters which concerned him and which, in his opinion, were indications that Kim might have been exposed to danger. He felt that Mrs. Lo had not recognized the significance of those matters. He was somewhat sympathetic to Mrs. Lo because he felt she "was in over her head...she should never have been assigned to that case."

In his opinion, Mrs. Harvey had made errors in interpreting Mrs. Lo's reports. He believed that good practice would have required Mrs. Harvey to accompany Mrs. Lo on some or all of her visits. That was because of Mrs. Lo's lack of experience and the possibility that she was not recognizing the importance or significance of what she observed in the Popen household.

Mr. Heath did not agree with Mrs. Harvey's view, as stated in her testimony upon the Inquiry, that her ability to pick the facts out of Mrs. Lo's reports made it unnecessary for her to accompany Mrs. Lo on any visit. He said Mrs. Harvey was in error in deciding that Mrs. Lo's oral reports and her recordings in the file were sufficient.

Mr. Heath testified that Mrs. Lo's written recordings contained enough material to cause an experienced social worker to be very concerned about the case.

He was asked to transpose himself in time and position to become a supervisor of the Ministry examining Kim's file in July, 1976. From that perspective he made several observations.

He observed that there was no indication that Kim had been medically examined since her return on May 27, 1976. As a supervisor, he would have inquired as to whether she had been so examined. If she had not been so examined, he would have arranged for it immediately. If her parents opposed such examination, he would have wanted the case to be reviewed by the Court at once.

He observed the recording of Jennifer Popen's family background and Annals Popen's involvement with Alcoholics Anonymous. He noted the absence of any safeguards built into the decision to return Kim to her parents. That would have caused him, as a Ministry Supervisor, to meet with Mr. Lovatt and Mrs. Harvey, as Local Director and Supervisor, respectively, to review the whole handling of the case and to provide some immediate and adequate protection for Kim.

As a Ministry Supervisor, he would have been concerned that Kim's was perhaps not the only case in the Society which was being handled inappropriately. He would have wanted to review the files of some other cases involving abuse to satisfy himself on that point. He regarded such cases as being "high risk" cases. If that sampling of such cases indicated that the same type of operating practices were employed in cases other than Kim's, he would have embarked on a larger review of the Society and a programme to correct the situation.

That review and corrective programme would involve the Local Director and Supervisors. Mr. Heath, as a Ministry Supervisor, would have involved the Board of Directors of the Society only in the most extreme instance of refusal or failure by the Local Director and Supervisors to act responsibly in connection with the review and corrective procedures.

This led Mr. Heath into a discussion with counsel as to the role of the Ministry and the application of section 2 of The Child Welfare Act.

He acknowledged that there had been a lack of field visits to the Society by the Ministry's personnel during and shortly before the years of Kim's life.

In his view the Ministry was not required to examine the file of every case in the Society.

He conceded that the Ministry may have failed to fulfill its obligations to the Society in that it failed to ensure that the Society did have a method for the supervisory staff to monitor case handling. He felt that, even if the Society did have such a method of monitoring, the Ministry might have augmented it by reading the files of a number of cases, randomly selected, so as to ensure that the Society was operating properly.

The Farina Committee had not seen anything to indicate that the Ministry carried out any such inspection of the Society in 1975 or 1976.

The Committee had found that Kim's case had been the subject of only very limited discussion within the Society. Mr. Heath wished there had been more discussion between the two departments of the Society and with Mr. Lovatt actively involved therein. He felt such discussion might have put the case in a different perspective.

Mr. Heath felt that Mr. Lovatt, as Local Director, failed to provide leadership to the Society. In his view leadership required an ability to respond to the concerns expressed by staff members, an awareness of programmes that should be implemented or altered and an ability to communicate and to be an effective advocate to the Board of Directors of the Society and to the public on behalf of the defined needs of the Society.

Mr. Heath did not feel that the local director of a children's aid society should be expected to be an expert in all things. But, if the local director lacks expertise in particular areas, special care is then required in the appointment of supervisory personnel so as to ensure that the entire management complement of the children's aid society does have sufficient expertise. The local director would be responsible for the selection and appointment of appropriate supervisory personnel.

Mr. Heath's opinion was that the local director of a children's aid society is responsible for ensuring that the supervisory personnel function adequately and in co-operation.

In Mr. Heath's experience, most communication to the board of directors of a children's aid society is channelled through the local director. The local director is responsible for keeping the board of directors informed of the existence of difficult cases or problems within the children's aid society.

Mr. Heath's opinion was that Mr. Lovatt should have advised the Board of Directors about Kim's case. He felt that Mr. Lovatt should have done so in August or September, 1976.

Mr. Heath said that the Farina Committee had received, from a variety of sources, allegations that the Board of Directors of the Society had not adequately responded to problems brought to its attention over a period of at least five years. This was, in fact, the basis for some of the statements by the Committee in its report to the effect that morale of the staff of the Society was low and that the Ministry should provide immediate assistance.

As an example of concerns expressed to the Board of Directors and not properly responded to by it, Mr. Heath spoke of an interview with Mrs. Mitchell, the former co-ordinator of volunteers of the Society for about three years ending in December, 1977. He said she had encountered difficulties, particularly with Mrs. Harvey and the Family Services Department. She experienced a sense of frustration and she resigned after Kim's case became a matter of public knowledge. She had stated her concerns to the Personnel Committee of the Board of Directors.

Mrs. Mitchell's testimony upon the Inquiry as to her dissatisfaction was similar to what Mr. Heath had understood her to say. In her testimony she spoke of Mr. Lovatt's failure to support her as strongly as she felt he should have.

Mr. Heath felt the Board of Directors of the Society, aware of personnel problems, failed to meet with the staff to consider those problems and possible remedies.

He suggested that, while such a duty is not imposed upon the board of directors of a children's aid society by The Child Welfare Act, good practice requires that the board of directors establish and maintain an efficient system to monitor the operations of the children's aid society and the performance of its staff in their various duties.

Mr. Heath said that one element of such a system of monitoring is the regular compilation of statistical information. Another element would be examination of comments or complaints from the public or even from members of the staff of the children's aid society.

In addition to such an internal system, the board of directors of a children's aid society might seek a review of its operations by the Ministry or by some qualified organization or person outside the children's aid society.

Mr. Heath was asked to comment upon the transfer of Kim's case from Mr. Carter to Mrs. Lo. He said it was poorly handled, particularly by Mrs. Harvey, who had arbitarily made the decision and then implemented it. He placed some responsibility on Mr. Carter and Mrs. Lo. In his view there should have been a meeting and discussion of and by Mrs. Harvey, Mrs. Lo and Mr. Carter. He felt Mr. Carter should have insisted that such a meeting be held and, if Mrs. Harvey denied his request, he might have spoken to Mr. Lovatt and, if still not satisfied and if still concerned as a professional social worker, he might have addressed the Board of Directors. In Mr. Heath's view Mr. Carter should have raised the issue and pursued it to a satisfactory conclusion.

Mr. Heath discussed the meeting of February 19, 1976 during which Mr. Carter and Mrs. Kirby, with Police Constable Wyville and Police Constable Charlton, expressed to Mrs. Harvey strong opposition to the suggestion that Kim be returned home. He said Mr. Carter and Mrs. Kirby acted properly in voicing their concerns at that time. He felt they should have sought Mr. Lovatt's intervention.

Having read Judge Nighswander's reasons for judgement upon the Society's application for custody of Kim, Mr. Heath expressed some concern that Kim was returned to her parents so shortly after those reasons were pronounced. Mr. Heath, like Mr. Higgins, had taken Judge Nighswander's judgement to mean that the matter should be returned to the Family Court before Kim was returned. The reasons for judgement did seem to contemplate the possibility that Kim might be returned to her parents.

The relevant portion of the reasons for judgement is as follows:

> "we have no evidence before us of what Mr. Popen had done, if anything, about his alcohol problem, and I am definitely going to note that he must give evidence that he has done something and that it is succeeding, before the Court will permit the child to return to its parents. This does not necessarily mean that the child will not be with its parents for a further six months, but simply means the Children's Aid Society have control for that period of time..."

Mr. Heath was aware that the practice surrounding the return of a child varied from jurisdiction to jurisdiction and from judge to judge. He was not aware of the prevailing practice in the County of Lambton.

He testified that he was aware of conflicting opinions as to whether a children's aid society can retain wardship of a child after returning the child to his or her parents.

Mr. Heath regarded Judge Nighswander's reasons for judgement as clearly showing his desire that he wanted safeguards built in to ensure Kim's protection in the future. He felt Judge Nighswander was concerned that the testimony as to what had happened to Kim did not correspond with the nature and degree of the injuries she had suffered.

When cross-examined upon his opinion that on August 11, 1976 the Society had ample grounds to justify its taking Kim's younger brother, Karie, into its care, Mr. Heath said he had taken children into care under similar circumstances. He felt that if there were doubt as to whether a child should be apprehended, the children's aid society should apprehend the child and present the appropriate application in court. In that regard, he spoke of doubt as it related to the protection of the child if left in the home in all the circumstances known to the children's aid society.

Mr. Heath acknowledged that the Farina Committee had not found any evidence that the younger child, Karie, had been abused or maltreated. Relying on the expression "may be endangered" in section 20(1)(b) (xii) of The Child Welfare Act, he felt that

Karie should have been taken into care by the Society as a safeguard. His opinion that Karie might have been endangered would have been based on the prior injuries to Kim and the earlier announced intention of the Society to apply for an order enabling it to supervise Kim's care. Personally, he felt that, apart from whatever happened on or shortly before August 11, 1976 to cause Kim's injuries, had Kim survived, the application for an order of supervision might have been enlarged so as to be referrable to Kim and the younger child.

Mr. Heath testified that even if, on August 11, 1976, he had felt that Kim had died as the result of an accident, he might nonetheless have considered apprehending the younger child. He would then have immediately commenced an investigation and inquiries of appropriate authorities, including the pathologist conducting the post-mortem examination of Kim's body. Mr. Heath felt that the Society should have immediately inquired of the police, the coroner and the hospital to learn the circumstances of Kim's death. He felt that, if abuse was indicated as a factor in Kim's death, the hospital would have been required by law to report that fact to a children's aid society or Crown attorney.

Mr. Heath's testimony was that social workers are placed in a dilemma in child abuse cases. They are required to be "appropriately supportive" of the family, but, at the same time, they must be alert to the possible presence of abuse of a child and the possibility that the child will be removed from the home.

In his opinion Mrs. Lo had been overly supportive of Kim's parents and had not provided a sufficient element of authority in her dealings with them. She seemed to have lost sight of the need to be alert to protect Kim from further abuse.

Mr. Heath acknowledged, as I think did all expert witnesses to whom such a question was put, that children suffer bruises in normal activities. He said some parents to whom a child has been returned after having been removed by a children's aid society do fear that the child may be removed again if he or she suffers any further bruises.

In Mr. Heath's view there was an "appalling lack of communication" among the various social work agencies in Sarnia, including doctors and public health authorities. His experience in other communities was that there had traditionally been fairly close liaison between public health authorities and children's aid societies. He had not observed a similarly close liaison between medical doctors and children's aid societies. He felt that medical doctors hesitated to report incidents of child abuse, but, he said, a closer co-operation by medical doctors began to develop about 1975.

That testimony was followed by his observation that, in 1975, the Ministry had inquired of children's aid societies and sought to learn how they dealt with cases of child abuse. At about that time the Ministry began to explore the role of the Ministry's Central Registry of child abuse cases.

Mr. Heath testified that in 1978 there was a much greater awareness of child abuse than there had been in 1975. He said knowledge of child abuse and of its detection and handling is growing year by year, but the basic practices of administration and case management, in terms of danger signals, detection and co-operation with other agencies, remain quite constant.

In Mr. Heath's opinion, any social worker employed in the protection of children during the ten or fifteen years prior to 1978 would have had some awareness of child abuse. He would have expected a social worker to be aware of "the battered child syndrome." In his opinion simple acquisition of a Master's Degree in Sociology would not necessarily imply awareness of that syndrome.

Mr. Heath said that when Mr. Allen enlarged the terms of reference of the Farina Committee on January 25, 1978 he expressed, in a general way, concerns which the Society had had for some time with reference to its operation and Mr. Lovatt's role. Mr. Allen had spoken of concerns that the Board of Directors had not received "a true picture of the operation of the Society." He also had expressed concerns about relationships between the staff association and the management of the Society.

Mr. Heath felt that those concerns arose from what members of the Board of Directors had observed "about the management of the Society" and what was expressed to the Board of Directors as a whole by members of the community and by employees of the Society. He said Mr. Allen had felt there had been a poor relationship between the Board of Directors and the staff in relation to service items as well as financial matters.

Mr. Heath testified that the Farina Committee quickly realized that in the time allotted to them for their review they could not fully and adequately examine all of the matters mentioned to them by a member of the Board of Directors and by the staff of the Society. These matters included the absence of written policies and procedures and problems and frustrations of staff.

An example of such frustration was Mrs. Mitchell's comment that the Board of Directors had not properly dealt with the resignation of group home parents. She had commented upon the misuse of volunteers, particularly in the Family Services Department, and Mr. Lovatt's failure to confront the issue. She had spoken of the lack of direction and the absence of a formal procedure to enable her to present her complaints and seek some resolution of them. Mrs. Mitchell's complaints had not come to a head until Kim's case became the subject of public comment.

Mr. Heath felt that Mrs. Mitchell had extended the role of volunteers within the Society. Traditionally volunteers served as drivers. Mrs. Mitchell and the Society asked volunteers to assist in some cases, perhaps to instruct a mother in home-making skills or to assist in budgeting or in the programmes of mother's groups.

Mr. Heath said that, for a volunteer programme in a children's aid society to be successful, the volunteers must be carefully recruited and then very carefully placed. He felt that the respective roles of the volunteer and the social worker assigned to work together should be well defined and known to both. He felt that the role of volunteers was important and that volunteers were entitled to receive respect within the children's aid society.

The Farina Committee formed the impression that in the Society, and especially in the Family Services Department, volunteers were not receiving appropriate recognition or respect, particularly from management.

Mr. Heath said that proper placement of volunteers was important to the clients of a children's aid society as well as to the volunteers and the social workers. Ongoing review of placement would be essential because of changes which develop in relationships between or among individuals.

Mr. Heath testified that the Farina Committee had concluded that there might have been an attempt to mislead the Board of Directors as to the facts of Kim's case.

He referred specifically to a portion of the minutes of the special meeting of the Board of Directors held on December 15, 1977 to discuss Kim's case.

The portions of those minutes mentioned by Mr. Heath are preceded by the following:

> "The President, Mrs.(sic) Allen, opened the meeting on the subject of the Kim Popen case and asked Mr. Lovatt, the Local Director to review the salient points of the case history as presented in a written summary form to every Board Member who was present."

Mr. Heath then read from the minutes as follows:

> "Mr. Lovatt stressed the following points in a summary of the Popen case to clarify a number of items."
>
> "June 1975, insufficient evidence to warrant intervention on the Society's first contact with the Popens."
>
> "The parents denied any abuse and refused the services of the Children's Aid Society and Lambton Health Unit. The Police accepted a watching brief."

In his testimony, Mr. Heath said:

> "I think in other evidence it has come out that is not so."

If that comment relates to the evidence upon this Inquiry, and I think it does, it is correct. The testimony of Mesdames Dick, Saul and Harvey was that on June 17, 1975 the circumstances were such as to merit lengthy involvement of the Society with the Popen family. Members of the Sarnia Police Force who testified denied having "accepted a watching brief" and I prefer their testimony to that of Mrs. Harvey and Mr. Carter in this area.

He then read further from the minutes as follows:

> "No. 2. On August 31st/75, a call to St. Joseph's Hospital made the C.A.S.aware of previous injuries to the child..."

His comment on that item was:

> "I would suggest that is not so. There was reference to previous injuries on June 17th [1975] at the time of the initial intake."

Mr. Heath is too kind to the Society to regard what was done on June 17, 1975 as being the "initial intake". It certainly was the time when some acts normally associated with the intake of a case were performed by Mesdames Dick, Saul, Hoad and Harvey, but the intake was not completed and the matter lay unattended until it erupted on August 31, 1975 when Kim was admitted to hospital.

Mr. Heath's comment upon that item is otherwise accurate. On June 17, 1975 the Society was advised of earlier injuries to and hospital treatment of Kim.

Mr. Heath commented that the next item setting forth numerous adjournments of hearings in the Family Court and Mr. Higgins' caution to Mr. Carter was true. Upon the testimony presented upon the Inquiry, that is a proper assessment of the item.

He read the next item in the minutes as follows:

> "A. No. 4. Mr. Popen accepted full responsibility for the injury received in August, 1975 by Kim Popen since he was drunk at the time, and the mother, Mrs. Popen, was absolved from any guilt. No conviction was registered against Mrs. Popen."

His comment thereon was:

> "That's substantially true."

In my view Mr. Heath is in error to regard what was said in the Family Court on February 23, 1975 as constituting an ackowledgement that Annals Popen "accepted full responsibility" for Kim's injuries. A reading of the transcript of the proceedings on February 23, 1976 reveals how Mr. Higgins' comments on behalf of Annals Popen were really devoid of acknowledgement that Annals Popen knew how Kim was injured.

Mr. Heath read the next item in the minutes as follows:

> "Since August, 1975 considerable evidence had accumulated on Mr. Popen's behaviour. He had ceased to drink and also attended Alcoholics Anonymous."

His comments on that item were:

> "I would be hard pressed to put that in the context of when that was supposed to refer to, because some of the decision-making that I believe was commenced there was no documentation as to his ability to handle an alcohol problem. We were certainly not presented any evidence regarding his attendance at A.A., etc. So that may or may not be misleading."

That comment by Mr. Heath may be valid, but it is overly generous to the source of the item.

If the item relates to the period from August 31, 1975 until February 23, 1976, it is misleading. During that period, with some minor exceptions at the beginning and near the end, Mr. Carter, the only worker of the Society engaged in the case, other than Mrs. Kirby who was concerned solely with Kim's personal care, had been unable to carry out tasks he would normally have carried out. He had virtually no contact with Annals Popen. He had no information as to Annals Popen's behaviour or involvement with Alcoholics Anonymous.

Judge Nighswander on February 25, 1976 in his reasons for judgement noted the absence of evidence "of what Mr. Popen has done, if anything, about his alcohol problem."

Even if the item relates to a longer period, until May 6 or even May 27, 1976, the information obtained by the Society as to Annals Popen's behaviour and attendance at Alcoholics Anonymous was scanty and unreliable.

In my view, in the context of all of the testimony upon the Inquiry, that item in the minutes was misleading.

Mr. Heath then read further from the minutes as follows:

> "6. On instructions from the Court, Mr. Popen was examined by a psychiatrist. The forthcoming reports were positive and concluded as follows, 'In summary then if Mr. Popen stays totally away from alcohol and attends whatever courses Mrs. Harvey or the Public Health Nurse might set up, and Parents Anonymous, if a branch of this were available locally, it would surely minimize the danger of the child being battered in the future.'"

He then commented as follows:

> "I would suggest that the whole paragraph, when we compare to the exhibit of the psychiatrist yesterday, is misleading in that the psychiatric testimony was decidedly qualified, and it was a far more cautious

> statement than what appears to be a very positive statement here."

Mr. Heath's comment is fair and correct. The item is misleading when read without knowledge of the testimony upon the Inquiry and without knowledge of other portions of Dr. Curtin's report.

After reciting a number of things told to him by Annals Popen, Dr. Curtin had written as follows:

> "Even though all these things would surely minimize the danger in the future, I am really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen. He denies ever having been abused himself as a child, and in fact, my enquiries from him yield such little abnormality that I wonder about his reliability as an informant.
>
> I would think therefore, that a more accurate assessment of his emotional state will likely result from objective enquiries rather than from any enquiries I might make from himself or his wife.
>
> In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it."

That portion of Dr. Curtin's report is followed by the portion of his report which is quoted in the item numbered 6 in the minutes.

Anyone who read that item numbered 6 in the minutes would be misled unless he or she read the whole of Dr. Curtin's report.

Mr. Heath continued his testimony by reading from the minutes and interpolating as follows:

> "7. Lambton Health Unit nurse and probation office have confirmed that nothing was observed which led them to suspect abuse. The probation officer visited on August 11, 1976 and saw only a

> sore lip. Mrs. Popen informed...'that she had seen the Doctor for this on the previous Friday.'"

> His comment on that item was:

> "It's true that for the health unit nurse and the probation office to have phoned the Society and confirmed that nothing was observed for them to suspect abuse may be true in one sense, but as the agency, who had guardianship of this child, I think the primary responsibility was on the Society to in turn have had previous contact, if not up to this point in time, to have had previous contact with those two agencies to work out a plan around mutual supervision and to insist that any indication of abuse would be reported to them and that the matter be conferenced. With all due respect, the impression is left here that there perhaps had been regular contact and inasmuch as they did not hear from those two agencies, they must presume that things were well, and that is not so."

That is a fair and correct comment. In various parts of this Report I comment upon the self-imposed isolation of the Society from other agencies and institutions in the community. The Society failed to assume its proper role of seeking and organizing the support and assistance of others in the performance of its various tasks. That isolation and failure are not indicated by the item in the minutes.

Mr. Heath continued his testimony and read from the minutes and interpolated:

> "8. At the time when the decision was made to return Kim home on May 27, 1976, we had the following information on file:
> a. Parents wanted Kim back and their lawyer would fight for the child's return. We know that.
> b. Both parents had attended the P.E.T. course and the supervisor of the course had commented favourably on their participation."

His comment upon that portion was:

> "As I recollect the commencement or the timing of that course it had barely begun, in the file there is reference to the fact that Mrs. Popen herself commented that the course would be ideal for older kids, and I recollect somewhere that no one had ever informed the instructor as to the background on this particular case.
>
> Q. Yes, that was the evidence.
>
> A. With all due respect to Parent Effectiveness Training (sic), I question whether that was the appropriate vehicle for improving the communication pattern and the handling and disciplining of Kim Popen in her home setting."

That comment is fair and is supported by the evidence given upon the Inquiry, save and except that upon the Inquiry the testimony was to the effect that any comment by the director of the Parent Effectiveness Training Course was after the Course had been completed and after Kim had been returned.

That item in the minutes is misleading.

Mr. Heath continued to read from the minutes as follows:

> "c. The parents had cooperated in every way with Children's Aid Society and the Probation Officer."

His comment upon that item was:

> "I would have to take that issue with the first part of that."

That comment is well supported by the evidence upon the Inquiry. At least until the latter part of February, 1976, Mr. Carter had been frustrated in his attempts to carry out case work as he might normally have done.

Mr. Heath read the next item from the minutes as follows:

> "d. Mr. Popen had stopped drinking and attended Alcoholics Anonymous."

His comment upon it was:

> "That may or may not be true. I saw no verification of this on file."

That comment was fair. Even upon the Inquiry there was little evidence upon that point.

He read the next item as follows:

> "e. Kim would be returned to her parents at the August 4th, 1976 Court Hearing because of lack of evidence to refute this action from taking place."

His comment thereon was:

> "We have in those two or three weeks leading up to the death of the child one phrase stands out in my mind, this home is not stable enough; there was all the discussion back and forth about Mrs. Popen withdrawing and becoming hostile, avoiding. I would suggest that is misleading."

I am satisfied that the Board of Directors of the Society would have been misled had they accepted that item in the minutes. From the testimony upon the Inquiry, there was an abundance of evidence which would have supported an application by the Society to extend the duration of the order placing Kim in its care. It was not a foregone conclusion that the Court would have declined to leave Kim in the care of the Society.

Mr. Heath read the next item as follows:

> "f. Children's Aid Society could have returned the child before the new baby was born and re-integrate the family by the time of the child's birth with the willing cooperation of both parents or could hold off until the August 4th, 1976 Court Hearing which would have terminated the wardship."

His comment upon that, similar to the last preceding comment, was:

> "There's a presumption that the wardship was going to be terminated. I think we discussed yesterday that one could argue both ways in terms of the timing of the return."

Again I recall the evidence upon the Inquiry which would tend to support an extension of the order making Kim a ward of the Society. There was no valid basis for the statement that the hearing on August 4, 1976 would have terminated the wardship.

In presenting that sort of statement to the Board of Directors, Mr. Lovatt seemed entirely to ignore the fact that the order granted by Judge Nighswander on February 25, 1976 was for a period of six months which would not expire before August 24, 1976. When Kim was returned on May 27, 1976, no hearing was scheduled for August 4, 1976. That date was selected in late July for presentation of the Society's application for an order for supervision of Kim. Until then there was no suggestion of any further hearing.

The second portion of Mr. Heath's comment is fair. Assuming that the decision to return Kim at some time was an appropriate decision and was properly made in all the circumstances, the evidence upon the Inquiry revealed that there were valid arguments to support a decision to effect the return before the birth of Jennifer Popen's next child, and that there were valid arguments to support a decision to delay that return until some time after the birth of that next child.

Mr. Heath read the next item from the minutes as follows:

> "g. The C.A.S. made the decision to return the child to its natural parents based on all the best evidence available at the time ..."

His comment upon that item was:

> "I would have to question that, I think if they are narrowing it down to all the best evidence available at the time to a matter of a few weeks before, I suggest that's an error. If they're presuming that the period of supervision from February until - excuse me - from May until two weeks or so before the child's death was the period, there are some positives there, but again, I find it totally divorced from the history that they knew went back to March of 1975, and all that had to be considered, and perhaps the most revealing statement that we've heard that decision proved to have unfortunate consequences."

The evidence upon the Inquiry supports Mr. Heath's expression of doubt and disagreement. The evidence upon the Inquiry shows that Mrs. Harvey alone, without prior consultation with anyone, decided that the "working hypothesis" for the management of Kim's case would be that she would be returned. Mrs. Harvey made that decision before Mr. Carter had been able to carry out elementary case work procedure.

Mr. Heath in his testimony said he could not comprehend how anyone could have made such a decision at that stage of Kim's case and on the information then known to Mrs. Harvey.

Mrs. Harvey persisted in that decision over the strong objections of Mr. Carter, Mrs. Kirby, Police Constable Wyville and Police Constable Charlton.

The meeting of May 6, 1976 was convened only to determine the timing of Kim's return in relation to the time of the birth of Jennifer Popen's child.

The organization and procedures of the Society effectively prevented or inhibited any opposition to the decision that Kim was to be returned.

The overwhelming weight of the evidence upon the Inquiry is that the decision to return Kim in May, 1976 was in error and contrary to normal acceptable standards of social work in relation to the protection of children.

Of all of the witnesses who testified upon the Inquiry, and who had skills and experience in this area, only Mrs. Harvey sought to defend the decision and the rationale behind it. She was a solitary proponent of her own tragic mistake.

On the evidence upon the Inquiry, it is clear that the Board of Directors would have been misled by that item in the minutes.

Mr. Heath testified that, from interviews with members of the staff of the Society, he gathered that many of the staff who attended that meeting were convinced that "the truth had not been told." He made that comment after noting that the minutes of the meeting showed that Mr. Lovatt and Mrs. Harvey had answered questions raised by members of the Board of Directors and of the staff. Those questions had particularly related to

> "discrepancies between the newspaper reports on the Popen case and the written summation of the Children's Aid Society file."

Mr. Heath said that even before reading the minutes of that meeting, the Farina Committee had recognized that there were discrepancies between the report to the Child Welfare branch of the Ministry and the contents of the Society's file.

Mr. Heath noted that the minutes of that meeting contained no reference to any suspicion that Jennifer Popen had abused Kim. In the light of the testimony upon the Inquiry that some members of the staff of the Society had had such a suspicion, it was Mr. Heath's opinion that Mr. Lovatt's failure to advise the meeting of that suspicion was "a significant omission" in the presentation of "the facts of the matter."

In my view, Mr. Heath's comment upon that failure by Mr. Lovatt is fair and valid. It is even more forcefully applicable to Mrs. Harvey. She was present at the meeting. She was responding to questions. Upon this Inquiry, she stated her suspicion as to Jennifer Popen's involvement in the abuse of Kim. While testifying upon the Inquiry, Mrs. Harvey had been asked if, at about the time of Kim's return in May, 1976, she was concerned as to which of Kim's parents was abusing her. Her response to that and supplemental questions was:

> "No...I was sure it was Jennifer...I was sure from the very beginning of our contact with the case, that it was her."

Mr. Heath was asked to comment upon the discussions between the Farina Committee and Mrs. Harvey with reference to the hearing in the Family Court on February 25, 1976, upon the Society's application for an order placing Kim in the care of the Society.

He said that the Committee had read Judge Nighswander's judgement before they spoke with Mrs. Harvey. He said it was a "very strong judgement." Mr. Heath had questioned Mrs. Harvey about the limitation to two months of the period of wardship sought by the Society. Her rationale for that submission initially was that Kim had already been in the care of the Society for six months. She had then told the Committee she had met privately with Judge Nighswander prior to the hearing to tell him that:

> "she really wanted six months wardship, but would be requesting the two months even though she didn't want two months."

She indicated to the Committee that the request for only two months wardship was "a strategy to appease Mr. Higgins."

Mr. Heath testified that other members of the staff of the Society interviewed by the Committee were not aware of such a "strategy." They included Mr. Carter who, in Mr. Heath's words, was "the primary worker." He said Mr. Carter had no recollection of having had much input into the length of period of wardship to be sought.

When asked if that absence of input indicated "very poor communication between a supervisor, who was acting as a court worker, and a case worker," Mr. Heath replied:

> "you're putting it rather politely, I find it appalling."

I share Mr. Heath's opinion of that detail.

When asked to express his views upon Mrs. Lo's involvement, Mr. Heath expressed some sympathy for her because she was given the case when she was "an inexperienced, untrained staff member." That sympathy notwithstanding, he concluded his comment upon Mrs. Lo by saying:

> "A. Without sounding entirely sarcastic, I would hope, however, that common sense would dictate with even the most limited knowledge of child abuse that you'd come running for consultation or for supervision when references are starting to be made about perusing. I mean she can't be entirely held blameless. There were these danger signals. I think they should have triggered something in her mind and she again seems to have overlooked them."

I share Mr. Heath's view that, even if allowances are made for her lack of experience and training, knowledge and common sense should have caused her to have greater and earlier concern for Kim's safety.

Mr. Heath was critical of Mr. Carter's handling of the case from August 31, 1975 to February 25, 1976. In part he said:

> "...while I gather that as they entered the Court process going right from September 1975 until the wardship in February 1976 I really don't find Mr. Carter going over, at least in August or September, going back to the very things that I would have expected a senior experienced worker to have noticed or asked for, like, what really happened in June, what really happened last March. If he may have done it, it's obvious that he was privy to the presentation of material for Court, but I don't pick up that he did his homework sufficiently in August in preparing himself for the case. At the time of the case transfer to Mrs. Lo, and

> this would be a fault I think on the part of Mr. Carter, and particularly Mr. Carter, in the transfer process to Mrs. Lo. There should have been this communication, there should have been this sitting down to discuss the case, and it appears not to have been done; it is just normal practice. It goes on in any agency. It may be very informal, it may be highly structured, but it goes on. It was not done here."

Thus Mr. Heath was critical of the two workers in the Family Services Department to whom duties in Kim's case had been assigned. In my view Mrs. Harvey, as Supervisor, must share that criticism. She was aware of Mrs. Lo's lack of experience and training. She was aware of the deficiencies in Mr. Carter's investigation and preparation of the case. If she did not have that awareness, she should have had it. If she did not have it her performance of her duties is even more shockingly inept.

Mr. Lovatt must also share the criticism. As the Local Director of the Society, he had a responsibility to ensure that the Society was organized or structured so as to ensure that the intake of Kim's case, including investigation of all incidents of reported injury and preparation for Court, was appropriate and that there were proper procedures for decisions at appropriate stages of the management of the case. He did not ensure that structure.

Mr. Heath observed that if an adequate investigation had been begun as part of the intake process immediately after June 17, 1975, the Society would have obtained information as to Kim's earlier injuries in March, 1975.

He said the Farina Committee was unable to determine the exact nature of the intake process of the Society. Having heard the testimony upon the Inquiry, I understand that inability.

Like the Farina Committee, the Inquiry heard of the structure of a short term team and a long term team within the Family Services Department, but there was no testimony to satisfy me that there was an established procedure to be followed to ensure the orderly intake of a case. There may very well have been a number of things that were usually done when cases were taken in to the Society. But, equally, some of the things which occurred in Kim's case, such as Mrs. Harvey's initial intervention to assume responsibility for Kim's case in June 17, 1975 and her intention to assign the case directly to a member of the long term team, were not unheard of and did not cause any concern to any of the workers involved in June, 1975.

In Mr. Heath's opinion it was incumbent upon the Society to investigate in June, 1975 not only the allegation or suggestion of abuse immediately prior to June 17, 1975, but also the suggestion that Kim may have been abused on an earlier occasion. As Mr. Heath observed, information as to that earlier occasion was readily available from hospital files and medical reports. He acknowledged that disclosure of such information might not have been voluntary by a hospital or medical doctor.

Mr. Heath's opinion was that Mrs. Harvey was responsible for that lack of investigation in June, 1975. He said it might have been done by any one or more of Mrs. Dick, Mrs. Saul and Mr. Carter.

Upon the testimony given to the Inquiry, it is clear to me, as I think it was to Mr. Heath and the Farina Committee, that Mrs. Harvey had relieved Mrs. Saul and Mrs. Dick from any responsibility for further investigation in June, 1975 and, by her failure to assign the case to Mr. Carter, had not placed that responsibility on him or anyone else. Mrs. Harvey alone was responsible for the failure of the Society to proceed properly with Kim's case immediately after June 27, 1975.

Mr. Heath testified that most of the staff of the Society interviewed by the Farina Committee mentioned

> "Mrs. Harvey's domineering personality, her aggressiveness, her bluntness."

He said all of that seemed to have imbued the whole of the Society. In his opinion

> "it must have interfered in case handling."

He said that Mrs. Harvey's style of supervision

> "tended to be rather directive rather than consultative."

He had some question as to whether her supervision contained much of the element of training.

That portion of Mr. Heath's evidence is important in relation to Mrs. Harvey's supervision of Mrs. Lo. An inexperienced and untrained new employee would be amenable to direction and would not likely note the absence of consultation. That Mrs. Harvey directed and that she did not consult is abundantly demonstrated by the testimony upon the Inquiry. That testimony also demonstrated the absence of any element of training of Mrs. Lo by Mrs. Harvey.

Mr. Heath felt that the method of the transfer of the case from Mr. Carter to Mrs. Lo was perhaps indicative of Mrs. Harvey's supervision of the staff. He presumed that, as in that instance, a lot of it was "done on the run" and was composed of a curt statement and no more.

Mr. Heath testified that, as a local director of a children's aid society, he had accepted most of the responsibility for self-monitoring of that society. He relied upon the competence and accountability of the supervisory staff. Supervision was largely his responsibility. The board of directors looked to him for that and for information on the operation of the society.

He was aware of the Ministry's surveys conducted by "readers" from 1971 until 1974. They were concerned primarily with adherence to the Regulations made under The Child Welfare Act and with statistical material. He shared their reports with the board of directors of the society.

In Mr. Heath's opinion, the local director of a children's aid society "should report all issues" to the society's board of directors. That would include reports upon occurrences in programmes, complaints about programmes, unusual expenses, indescretions of staff, or public criticism of the Society or its staff.

He specifically mentioned that the death of a child in care should be reported to the board of directors whether death was a result of abuse or from natural causes.

He said that controversial items that might have some public notoriety should be brought to the attention of the board of directors. He said that such reports should be made whether or not the local director could defend the society's programme or policy.

Mr. Heath summed up his opinion by saying:

> "I think there has to be a great degree of openness and accuracy and honesty with your board."

While he was a local director of a children's aid society, Mr. Heath devised a system whereby, in the event of controversial or unusual matters, he immediately reported to the president, vice president, and secretary-treasurer of the Society. Those officers then determined whether it would be necessary to advise the board of directors. A special meeting of the board would be convened if circumstances warranted it.

On all of the testimony upon the Inquiry, it is clear to me that Mr. Lovatt did not meet the standard that Mr. Heath suggested should be met by the local director of a children's aid society in relation to his duty to report to the board of directors of that society and to keep them informed of such a case.

Mr. Heath's standards are reasonable. Mr. Lovatt was derelict in his duty to the Board of Directors. That failure began in September, 1975, or in August, 1976 at the latest, and continued up to and beyond December, 1977, at least until the Farina Committee reported to the Board of Directors on February 28, 1978.

Mr. Heath testified that when the Farina Committee met with the Board of Directors of the Society, Mrs. Harvey was on sick leave. On completion of the presentation of the Committee's report, Mr. Lovatt acknowledged the need for assistance in the operation of the Society. That need related not only to supervision of the Family Services Department and the provision of court services, but also to the financial and accounting affairs of the Society, the management of child abuse cases and the facilities for children who run away. Mr. Heath described it as "a real groping for help" in what was perceived to be a very difficult period for the Society.

Mr. Heath said that members of the Board of Directors, gathering informally after the special meeting, seemed to accept the accuracy of the Committee's report, including specifically the reference to the concerns felt by the Board of Directors, particularly from December 15, 1977, as to the accuracy of information about Kim's case presented to them.

He said they were critical of Mr. Lovatt, but at the same time felt some concern for his well-being. He said there was far-ranging discussion as to the future management of the Society and the role or dilemma of Mr. Lovatt, Mrs. Harvey and other members of the staff.

Mr. Heath said he was rather shocked by the expression of some, especially Mr. McPhedran, which indicated that the Board of Directors had had some earlier indications of problems within the Society. Those problems perhaps were not as serious as those indicated by Kim's case, but the Board of Directors had needed something such as the Committee's report to enable them to take corrective action.

Mr. Petersen, the second member of the Farina Committee to testify upon the Inquiry, offered testimony corroborative of that of Mr. Heath with reference to the appointment, terms of reference, methodology, deliberations, conclusions and report of the Committee.

As in the case of Mr. Heath, Mr. Petersen's attention while testifying was directed only to the second version of the Committee's report.

Mr. Petersen confirmed that each member of the Committee received a copy of the recordings and file material relevant to the case and then reviewed those materials privately. Each member relied on her or his own knowledge and skills. On all of the major issues in the case, there was an uncanny unanimity of findings, but each member arrived at her or his findings independently of the other members. That same sort of unanimity pervaded the Committee's discussions after they had made their findings.

Mr. Petersen felt that the Committee's report, while written by Mrs. Farina, was really a document produced by the three members.

He agreed with Mr. Heath's testimony in respect of what he regarded as danger signals, indications that Kim might have been exposed to risk, which were to be found in the recordings in the files of the Society.

He confirmed that in its review and subsequent deliberations, the Farina Committee had applied standards of knowledge and expertise that would have been usual and acceptable during the years 1975 and 1976. In his opinion, and in his own experience, the criteria applied by the Committee would have been applicable to the review of any case of child abuse arising between 1957 and 1978.

Mr. Petersen testified that the Committee were aware that in those years during Kim's lifetime many children's aid societies did not have formal directives as to the management and handling of cases of child abuse. They bore that in mind as they prepared their report.

Mr. Petersen was questioned about the value to a local children's aid society of the visits of "readers" from the Ministry. He pointed out that the "readers" were not trained social workers. Primarily they were in search of statistical information. They made no judgement as to the competence of the local society and its staff in the performance of duties. They did not examine the details of case management. There was little chance that they would have detected any failure by the local society in some aspect of case management.

There were instances when a supervisor from the Ministry would meet with the local society's supervisory personnel to review the report upon the society following the visit by the "readers" and to consider any action that might be required to correct any weakness or shortcoming indicated.

Mr. Petersen was aware that the visits of "readers" to children's aid societies had ceased in about 1974 or 1975. That was not done by any formal procedure or prior notification to the children's aid societies. The visits merely stopped and some time later, when a local society, wondering when the next visit would be, inquired of the Ministry, it would learn that the "readers" would not visit.

Mr. Petersen felt that the visits of the "readers" were of value to the management of the local societies. He found that the staff, anticipating such a visit, strove to get recordings and other matters up-to-date.

Mr. Petersen shared Mr. Heath's opinion that a duty lies upon the local director of a children's aid society to keep the board of directors informed about the state of the society. In his opinion it was most important that the local director should inform the board of directors not only of favourable reports or events, but especially should inform them of matters that may reflect unfavourably upon the society or its personnel in any way. Mr. Petersen said that in his experience it was "common practice in most agencies" for local directors to make such reports to the boards of directors.

Mr. Petersen felt that Mr. Lovatt had not kept the Board of Directors adequately informed as to what was occurring within the Society and as to how it was functioning.

Mr. Petersen was aware that, by reason of human weaknesses and personalities or perhaps by reason of differing conceptions of responsibilities and matters, there might be occasions when a local director would fail to inform the board of directors of something which had gone badly for the society.

For that reason Mr. Petersen felt it would be helpful for local children's aid societies to be examined by some external force from time to time. In his opinion, while that would be helpful, the local society still was responsible for ensuring, to itself and others, that it fulfilled its statutory mandate. He felt the local society should not rely entirely upon review or examination of its operation by an outside force even such as the Ministry. He believed that each local society should have developed procedures whereby it could satisfy itself that it was fulfilling its mandate.

Mr. Petersen said that such a procedure might require each member of the supervisory personnel to carry out regular reviews of the files of the workers reporting to him or to her. The purpose of such a review would be to ensure that the services provided by each worker were "carried out in a responsible fashion according to acceptable standards."

In his opinion it was critical to the success of any such procedure that the local director perform the duties of that office, including supervision of those in supervisory positions. He felt that the local director must be knowledgeable of the duties of that office and of what to expect from subordinates in the performance of their duties.

Mr. Petersen was critical of Mr. Lovatt's delegation of responsibility for provision of services by the Society. The Committee felt that that delegation by Mr. Lovatt to Mrs. Harvey was inappropriate. They felt that, despite such delegation, he remained responsible for the provision of services by the Society and the maintenance of acceptable standards of such services. Mr. Lovatt could not restrict himself to concerns of budget and administration.

Mr. Petersen recognized that in any system of self-monitoring devised by a children's aid society the board of directors would depend upon the local director. In a sense they would be "almost at the mercy of the local director." While a board of directors should not be excused if it did not receive information and did not ask the local director for such information, the board of directors should be entitled to assume that information furnished by the local director is honest and accurate.

Mr. Petersen said he and the other members of the Farina Committee found that the management of Kim's case by the Society was not "up to par." I infer he meant it was not managed satisfactorily and to the usual acceptable standards.

While the Committee had concerned itself only with service issues related to Kim's case, other matters inadvertently came to its attention. These included Mr. Lovatt's failure to provide leadership to the staff of the Society and its Board of Directors. That became apparent to the Committee from its observation of the Society as a whole and from its interviews with various persons.

Another matter that came to the Committee's attention was the supervision of what Mr. Petersen chose to call the "Protection Department." I infer from the whole trend of the testimony, that he was then speaking of the Family Services Department.

Mr. Petersen believed that a local director is required, as part of the duties of that office, to advise the board of directors of how the children's aid society should fulfill its mandate, of the difficulties that might be encountered and of areas in respect of which policies should be developed or changed. In his experience it is common practice for the local director and other staff, aware of problems or concerns, to make to the board of directors proposals upon matters of policy. Usually such proposals would be considered by a committee of the board and then by the board as a whole.

Mr. Petersen observed that The Child Welfare Act does not contain detailed information upon the day-to-day functioning of the children's aid societies. In his opinion it is therefore incumbent upon each society to develop and maintain its own policies and procedures to direct and govern its personnel in the performance of their various duties.

Those policies and procedures should be set forth in writing, as in a staff manual, and should be reviewed periodically and amended as required. They should indicate the minimum standard of service that will be acceptable.

It is a responsibility of the local director to provide leadership in this area both to the board of directors and to the staff. Thus the local director would have to be aware of current developments in the field of social work embracing the mandate given to children's aid societies by The Child Welfare Act.

Mr. Petersen found it rather shocking and disheartening that, when asked to produce the policies and procedures of the Society, Mr. Lovatt presented "almost next to nothing."

Mr. Petersen recognized that smaller societies might have difficulty in producing a manual of policies and procedures, perhaps because of insufficient time being available. However, he said all children's aid societies in Ontario have the same mandate; so if one cannot, for whatever reason, produce its own manual of policies and procedures it can obtain a copy of one prepared by another society and use it after making additions, deletions and changes as its own experience dictates are necessary to meet its local conditions.

He felt that a small children's aid society might function without a written set of policies and procedures. That would require the supervisory staff to provide very regular and very close supervision. From the tone of his testimony, I inferred that he did not find that that sort of supervision was given in the Society.

He said that in the absence of written policies and procedures, a worker new to the staff would be totally dependent upon his or her supervisor. In my view that was the situation in which Mrs. Lo found herself in relation to Mrs. Harvey.

Mr. Petersen recognized that information would come to the local director from many sources, including the Ministry. He said such information would not always require immediate amendment of any policy or procedure, but nonetheless it would be incumbent upon the local director to ensure that the information was passed to the staff.

Mr. Petersen acknowledged that because of the difficulties of reducing standards of service to writing it is often necessary for the supervisory staff to express or interpret them orally to the workers.

He felt that since 1976 the memoranda from the Ministry have indicated an increasing emphasis upon standards of service and upon what clients are entitled to expect from social workers.

Counsel invited Mr. Petersen's comments upon various portions of the Committee's report.

With reference to the Committee's commendation of the Board of Directors for having requested the review by the Committee, he said that that action by the Board was an indication it had a responsible attitude and was willing to seek and accept independent assessment and advice. He said that the Board of Directors, through Mr. Allen, offered every assistance to the Committee even though the Board recognized that it too might be the subject of negative criticism by the Committee.

He said the Committee's reference to 1178 children having come into the care of the Children's Aid Society in ten years came about by reason of the wish of the Committee to place Kim's case in an appropriate perspective within the entire operation of the Society. The Committee relied upon Mr. Lovatt for the accuracy of the figure "1178."

Mr. Petersen said that in dealing with abused children there is "a high risk" that, if they are placed back with their families, abuse will continue or recur. He said there is always an element of risk when a child is returned to his or her parents and that risk becomes greater if there is a history of abuse or mistreatment of the child.

In his view, good practice would require that, in the event of a child's return to the family home, the children's aid society ensure that that risk is limited to what he called "a reasonable risk." He acknowledged that determination of whether a risk was "reasonable" involved the application of personal judgement.

He said that a number of social workers considering one case might arrive at a variety of decisions as to whether the risk in that case was "reasonable." Social work is not an exact science; so he suggested that no one could say that any particular one of those workers was correct or wrong.

The Committee was unanimous in their opinion that in Kim's case there was a "high risk" involved in her return to her parents. They were unanimous in believing that no one having the information available to the Society should have made the decision to return Kim.

Mr. Petersen testified that the personalities of the personnel of the Society, as in any organization, had a bearing upon how it functioned. That led him into some comment upon Mr. Lovatt and Mrs. Harvey.

He regarded Mr. Lovatt as a pretty genuine and easy going person, dedicated in his work and concerned about it. Mr. Lovatt was much distressed by what had happened and spoke of resigning at once. The Committee encouraged him to remain because they felt he had something to contribute, particularly in the areas of budget and administration.

Mr. Petersen had known Mrs. Harvey for some years. She had a lot of knowledge in the field of child welfare and had an extremely strong personality. She held strong views in her profession.

Mr. Petersen felt she might reach decisions quickly and be forceful about defending them and resisting any suggestion for change of them. He cited, as an example of that, the way in which Mrs. Harvey had overruled the opposition of Mrs. Kirby, Mr. Carter and police officers to the suggestion that Kim be returned to her parents. Mrs. Harvey gave a telling demonstration of that side of her personality or character when, in her testimony upon the Inquiry, she defended her decision to return Kim to her parent's home.

He thought she would most often arrive at the correct decision and had an ability to get to the heart of any matter.

The Committee were impressed by the dedication of members of the staff, both professional and clerical. They worked hard. They cared for the welfare of children.

The Committee felt that the staff comprised a good basic foundation to enable the Society to fulfill its mandate, but had encountered problems because of the leadership given to them. In assessing that leadership, the Committee looked at the lack of leadership from Mr. Lovatt and the "misguided" leadership by Mrs. Harvey. They felt Mrs. Harvey was "misguided" in assuming responsibilities and making decisions without consultation with others or without appropriate regard for the view of others.

Kim's case was a tragic example.

Mr. Petersen concurred with Mr. Heath's views as to the need for a process whereby a social worker might seek to change the decision of a supervisor. He enlarged upon that to suggest that the personalities of those involved in the process might affect it. He said that a supervisor should not be upset if a worker sought to have the local director vary or revoke the supervisor's decision. He felt that the supervisor should be alert to the worker's concern and should try to resolve it directly and, if unable to do so, should suggest that they both approach the local director. In his view that sort of approach is important to the maintenance of good relationships between the supervisor and the workers.

Mr. Petersen testified that the Farina Committee found that there were good relationships between the Supervisor and workers in the Children's Services Department of the Society. That sort of relationship did not exist in the Family Services Department of which Mrs. Harvey was Supervisor. The workers in that department were loyal to Mrs. Harvey and found her to be supportive. Mr. Petersen said that the Committee were concerned about the relationship between Mrs. Harvey's department and the rest of the Society.

He said that a degree of friction between departments is common in children's aid societies with a departmental structure. It is the duty of the local director to exert the authority of that office to ensure that the departments overcome the friction and work together for the protection of the children for whom the children's aid society is responsible.

The extent of the rift or tension between the two departments was a real concern to the Committee. That was particularly so when coupled with the lack of leadership by Mr. Lovatt. Mr. Lovatt had conceded that Mrs. Harvey was a "difficult" person and "he let her more or less do things her way." In the result, the two departments were "out of balance" and Mr. Lovatt was not strong enough to resolve the problem.

Mr. Petersen said that the Committee observed that discipline and practices in the Family Services Department were really in contrast to discipline and practices in the Children's Services Department. On the basis of what was told to them and their own observations, the Committee felt that in the Family Services Department there was not a satisfactory effort to keep the necessary records up-to-date or to record what the workers were doing. In the Children's Services Department the records were maintained satisfactorily in the view of the Committee.

My findings upon this Inquiry in respect of the records of the Society are similar to the views expressed by Mr. Petersen. In virtually every instance in which I have found error or in which I have expressed doubt as to the reliability of the records of the Society, the item or document was found in the recordings or files of the Family Services Department or emanated therefrom.

Mr. Petersen, primarily on the basis of his assessment of Mr. Allen and Mrs. Wood with whom he had greater contact, felt that the Board of Directors of the Society measured up well. The problems of getting members of the Board of Directors to serve on committees was not unique to the Society. He felt the Board of Directors were keenly interested in the well being of the Society and were prepared to do what was necessary to improve it.

He felt that while the Board of Directors, or some of them, had an awareness of some shortcomings within the Society, particularly in relation to Mr. Lovatt and Mrs. Harvey, they were shocked when the Farina Committee reported to them. They were so concerned that some met informally late into the ight after the report was presented. They recog-ized the presence of the problem and the need for mmediate corrective procedures.

Mr. Petersen said that in assessing Mrs. Lo's involvement in Kim's case, the Committee placed greatest importance upon her limited social work skills obtained in an academic setting and her lack of training and experience as a social worker. He spoke well of Mrs. Lo as one with the potential to be a good social worker. He said Mrs. Lo received inadequate or insufficient direction from Mrs. Harvey in the day-to-day matters in Kim's case.

That latter conclusion was based on the Committee's assessment of what was told to them by Mrs. Harvey among others. The inadequacy or insufficiency may not have been in the frequency of supervision, but was in the content thereof. The supervision lacked adequate review of Mrs. Lo's observations. It lacked instruction to Mrs. Lo as to what information might be available to her and where it might be found. Mrs. Harvey did not carefully instruct Mrs. Lo as to various elements of child abuse loosely categorized as "danger signals." Mrs. Harvey did not pay enough attention to what Mrs. Lo observed and reported to her. The Committee felt that Mrs. Lo had noted and reported to Mrs. Harvey matters that should have alerted Mrs. Harvey to the possibility of complications and difficulties.

The Committee were informed that the recordings by Mrs. Lo were not transcribed into Kim's file in the Family Services Department until after Kim's death. Thus they assumed that Mrs. Harvey proceeded on oral reports or handwritten notes from Mrs. Lo.

Mr. Petersen felt Mrs. Lo had been in a difficult position. By reason of her lack of training, skills and experience, she could not challenge Mrs. Harvey.

The Committee was told that Mr. Lovatt had elicited Mrs. Harvey's undertaking to supervise Mrs. Lo very closely while she was working on Kim's case. Mrs. Harvey did not deny that by giving that undertaking she assumed responsibility for the management of the case.

Mr. Petersen said it would be preferable to have an experienced worker on a case such as Kim's, but that might not always be possible because of other circumstances. If such a case is assigned to an inexperienced worker, the supervisor must give close supervision.

In Mr. Petersen's opinion, a person serving as a social worker in a hospital, as Mr. Khattab did, should have had some awareness of child abuse.

In its report, the Committee wrote of the absence of clear channels of communication within the Society. It recognized that Mr. Lovatt did report to the Board of Directors, but there was no clear definition as to what was expected in his reports upon service matters.

The Committee found it to be "glaring" that Kim's case was not reported until after it became the subject of news reports.

Mr. Petersen said that by 1978 members of the public, as well as social workers, were more aware of child abuse than they had been in earlier years. In the same period the Ministry had been providing to the children's aid societies more information and direction about child abuse.

In the information from the Ministry during the latter period, Mr. Petersen found a greater emphasis was placed upon the risk involved in the return of children to their parents than upon the general philosophy of keeping families together or reuniting them.

Chapter XXIX

Developments Within or By the Ministry of Community and Social Services with Reference to Child Abuse

In this Chapter I shall call the Ministry of Community and Social Services the "Ministry."

I have expressed strong criticism of the Ministry in relation to the effect which its policies and procedures, its actions and its inaction and its errors and omissions had upon Kim. The Ministry failed Kim. However, perhaps in part as a result of recognition of some of its weaknesses as disclosed or demonstrated during the Inquiry, the Ministry began to seek to improve its facility or ability in relation to child abuse. In writing that last sentence I have fallen into use of the type of expression so common to employees of the Ministry who testified. I have already mentioned their jargon of the type decried by Petronius.

I am satisfied that during all of Kim's lifetime there were in the employ of or available to the Ministry persons who were highly trained, skilled and experienced social workers, knowledgeable in the entire field of child abuse and dedicated to the high principles of their profession. I am satisfied that had those employees of the Ministry been aware of Kim's case the tragedy of her death in August, 1976 might very well have been avoided. I believe that would have been so even if employees with the appropriate knowledge and experience and skills had seen, initially, only the Society's reports to the Central Registry in September, 1975 and April, 1976. Those reports would have caused such knowledgeable workers to make further inquiries. Dr. Herbert Alvin Sohn, whose testimony I review in greater detail later in this Chapter, was shown and given an opportunity to read and consider the reports from the Society to the Central Registry dated September 8, 1975 and April 14, 1976.

Counsel then put a number of questions to Dr. Sohn who responded thereto. That series of questions and answers was transcribed as follows:

> "Q. Had you been, in the position in the Ministry to be reading such reports and attempting to advise the local Children's Aid, as indeed the Field Consultants now attempt to do, as on the Child Abuse question here, what if any recommendations would you make - now firstly, would you be in the position where you have some concern reading these reports as to the safety of the child and her being returned to the home.
>
> A. I would have a great deal of concern about the safety of the child.
>
> Q. All right, would you please outline why, having regard to these reports?
>
> A. The first report indicates that this is the third incident in which this child has been admitted to the hospital with fractures and bruises. I would be very much concerned about how many incidents about how many incidents prior to this that were not known to this particular hospital. I would want to know a lot more about what can be found out concerning that family and its relationship, particularly to that child. I cannot find in this report any indication that that has been attempted. Clearly there is a statement here that subsequent action will be dependent on police investigation and parental co-operation. I would think that in addition to the police investigation it is extremely important for a social investigation to have been conducted and a psychiatric investigation with both the mother and father. Unfortunately a psychiatric investigation was done only with the father. Clearly we have incidents, have experience that one parent will try to cover for another parent and clearly reflected in one of the reports here the police expressed that concern that it is

really the mother they should be concerned about rather than the father.

Q. Well then based upon those reports you would have wanted to have been satisfied in a good many more areas than apparently the local Children's Aid gave its attention to before this child would be returned to the home?

A. In terms of what is reflected in these two reports, yes."

Dr. Sohn's opinion so expressed was not unlike that of other qualified persons who examined those two reports and commented upon them in testimony upon the Inquiry.

It is the fault of the Ministry that those persons in its employ were not aware of Kim's case. That fault has many bases. Some of those bases apparent to me were:

1. The Ministry did not employ a sufficient number of such persons during Kim's lifetime and for some time prior to her birth.

2. Because of their lack of numbers those who were in the employ of the Ministry during Kim's lifetime were unable to provide a level of service to children's aid societies sufficient to represent a reasonable or adequate fulfilment by the Ministry of its duties and obligations to and in respect of those societies during Kim's lifetime.

3. The Ministry maintained from 1966 until 1978 a Central Registry of Child Abuse, hereinafter in this Chapter called the "Registry," which was of doubtful value to anyone and was of no value to Kim. That represented an effectively useless expenditure of time and money by the Ministry and by the societies.

4. The procedures relative to the operation of the Registry during Kim's lifetime was such that it was unlikely that such qualified personnel of the Ministry would be aware of the matters reported to the Registry. The reports to the Registry in respect of Kim were not brought to the attention of

any such qualified personnel of the Ministry during her lifetime.

5. Because such qualified personnel of the Ministry were unable to fulfill the Ministry's statutory duty to supervise, inspect and advise the Society during Kim's lifetime they did not learn of Kim's case during her lifetime.

6. Because the Ministry, by a process of attrition, withdrew the service of "readers" to the children's aid societies, no such service was provided to the Society during Kim's lifetime. The slight possibility that such service might have brought Kim's case to the attention of "readers" and thence to qualified persons in the Ministry was removed by the Ministry.

7. The Ministry had not in 1975 and 1976 begun to devote an appropriate part of its effort to the problem of child abuse.

In my view the personnel of the Ministry possessing those qualifications in the area of child abuse should have been aware of Kim's case no later than the day on which the Society's report dated September 8, 1975 was received by the Registry.

If the Ministry had been fulfilling its statutory duties to supervise and inspect the societies in 1975 Kim's case might very well have been known to such qualified personnel of the Ministry long before September 8, 1975. I appreciate that the likelihood of that occurring was remote and would have required the conflux of several events. The absence of supervision and inspection by the Ministry prevented even the possibility of the necessary confluence.

In addition to the establishment and maintenance of the Registry the Ministry had demonstrated in other ways its awareness of the problem of child abuse prior to 1975. It would seem however that such awareness of the problem was not accompanied by significant interest and activity by the Ministry.

Dr. Sohn was appointed Co-ordinator of the Ministry's Child Abuse Programme. His appointment was effective on June 1, 1976. He was the first person to occupy that position.

Dr. Sohn testified that until his appointment to that position the Ministry's statutory duties in respect of the protection of children had been performed through the children's aid societies under The Child Welfare Act. He said that in 1976 the Ministry decided that it was necessary for it to establish a separate programme within the Ministry to provide stimulus, encouragement and consultation to the societies. The programme was also expected to produce recommendations as to the development of legislation and of policies and procedures within the Ministry as to material to be used in the training of workers and the education of the public.

Dr. Sohn testified that in performance of his new duties he reviewed the function of the Registry. He said that the Registry had been intended to serve two main purposes.

The first purpose was to be a source of information to assist in "tracking" any person involved or suspected to be involved in any incident of abuse who may have moved from the area in which the incident of abuse allegedly occurred or who may have dealt with more than one doctor or hospital or social worker.

The second purpose was founded on the principle that in most cases an incident of serious abuse is preceded by at least one incident of less serious abuse. I presume the theory was that if the Ministry and the local society were aware of an incident of abuse one or both of them could act to prevent the more serious abuse that was most likely going to be caused in the future.

A third and subsidiary purpose was to provide information to enable the Ministry and the societies to understand the nature and extent of abuse in various parts of Ontario.

Dr. Sohn's testimony was similar to that of others who expressed dissatisfaction with the function of the Registry. He said the Registry was used in different ways and to various degrees by the societies. Some societies sought information from the Registry at the first suspicion that there might have been an instance of abuse. In some instances the Ministry's staff would request additional information from a society if a supplementary report were not received within a reasonable time after the initial report on the matter was filed. The Ministry did compile and distribute an annual report upon the function of the Registry.

Dr. Sohn said that the information obtained from the Registry was useful. He did not say to whom it was useful or to what extent or purpose it was used.

He did say that the review which he began in 1976 did lead to a greater use of the Registry. He and others participating in the review had seen information which he felt compelled to bring to the attention of the Director appointed under The Child Welfare Act because he, a qualified social worker, had recognized from the relevant reports to the Registry that dangerous situations existed in the instances described in those reports. The Director had used Dr. Sohn and his staff in assisting the local societies and other personnel of the Ministry in working with cases reported to the Registry.

I infer from the latter portion of Dr. Sohn's testimony that Kim's was not the only case of some significant concern for or danger to a child reported to the Registry, but unknown to properly qualified personnel of the Ministry. I infer that those other cases, like Kim's, lay unattended by the Ministry even after they were noted by the clerical persons who had been left with responsibility for the function of the Registry.

Dr. Sohn frankly stated that in 1976 the Ministry did not assign to any of its trained social workers responsibility for the review of reports sent to the Registry. He did not seek to becloud or conceal that fact by using the rather grandiose title of "Review Unit" given by the Ministry to the clerical person who received and filed the reports to the Registry. There was no testimony that the situation was otherwise in 1975 or earlier years. I am satisfied it was not.

In my view that is a clear indication that, until Dr. Sohn began that review of the Registry, the Ministry's policies and procedures regulating the operation of the Registry did not provide an adequate mechanism to inform the Director and the qualified staff of the Ministry of the cases reported to the Registry. It confirms my stated belief that the Director and qualified personnel of the Ministry were not aware of the particulars of cases reported to the Register and, *a fortiori*, made no use of that information in dealing with such cases, by assisting the local societies or otherwise.

I note, as did Dr. Sohn in his testimony, that his appointment occurred about three years after the Ministry had received, published and distributed a document entitled "Child Abuse in Ontario--Research Report 3, Ontario Ministry of Community and Social Services - Research and Planning Branch, November 1973." I have mentioned that report earlier and there and now I call it the "Greenland Report" because of the participation of Dr. Cyril Greenland in its preparation.

The Greenland Report had expressed concern about the usefulness of the Registry, the manner and extent of reporting to it and the co-ordination and co-operation between and among children's aid societies and other agencies. Even three years after the Greenland Report the Ministry merely appointed Dr. Sohn to be Co-ordinator of its Child Abuse Programme and one of his tasks was to review again the Registry which the authors of the Greenland Report had examined and reported upon in 1972 and 1973.

I am reminded of the phenomenom described by Petronius.

I infer from Dr. Sohn's testimony that, notwithstanding the contents of the Greenland Report, the Ministry had not, in the intervening period of about three years, done anything to improve or strengthen the Registry, its function or its usefulness to the Ministry, the societies or the persons, whether abused children or abusing adults, named in reports to the Registry. An additional two year elapsed before any change occurred.

It was not until May, 1978, months after Kim's had become one of the highly publicized cases of death resulting from child abuse and after this Inquiry had been instituted, that the Ministry revised its procedure in relation to reports filed with the Registry. Only then did the Ministry begin to forward a copy of each such report to the Child Welfare Consultant in the Ministry with responsibility for supervising, inspecting and advising the children's aid society which had filed the report. That Child Welfare Consultant, presumably adequately qualified and experienced to analyze and assess such reports, would then be responsible for the future action, if any, to be taken by the Ministry in relation to the matter.

Upon the evidence I am satisfied that if that procedure had been followed in September, 1975, when the first report about Kim was filed with the Ministry, Mr. Charko or Mr. Mainville, like Dr. Sohn, would have recognized that the matter required some inquiry and attention by the Ministry. I am satisfied that, if nothing else, any of those gentlemen would have been in prompt communication with the Society.

That communication would certainly have been directed towards obtaining information from the Society about the case and particularly the concerns that qualified social workers should and would have had even on the basis of the first report to the Registry. I am confident that workers such as Mr. Charko, Mr. Mainville and Dr. Sohn would not have contented themselves with one telephone call or letter to the Society, but, subject of course to their own limitations because of the lack of qualified personnel in the Ministry, would have maintained an ongoing interest in the case, asking questions, making suggestions and giving advice. All of that would have been intended to ensure that the case was properly managed in every particular. I am satisfied, that with such supervision and assistance by the Ministry the handling of Kim's case by the Society would have been very different.

I appreciate that whatever might have followed from that original communication from the Ministry to the Society would have depended upon the response from the Society. In light of the reports to the Ministry and to the Board of Directors of the Society by Mr. Lovatt and Mrs. Harvey, even as late as December, 1977 and February, 1978, I am not confident that any such response would have been reliable, complete or accurate. However if the Ministry had, by such a communication from Mr. Charko or Mr. Mainville, in September, 1975, demonstrated its interest in and concern about Kim's case the whole history of the case from then on might have been different. However it is idle to speculate.

Dr. Sohn testified that his responsibilities included the provision of education about abuse of children as a component of the training of social workers. He also had some responsibility to acquaint the public generally with the problem and thus, hopefully, to ensure a co-ordination of efforts by various agencies and disciplines in each area of the province to deal with the problem.

He said that in February, 1976 the Ministry convened a two-day seminar attended by about eighty persons. He said those persons included lay persons and representatives of all of the disciplines concerned with abuse. Those disciplines included law, medicine, nursing, social work, education and law enforcement.

The report of that seminar, entitled "A Fifth Step" was printed. Dr. Sohn said that report was widely distributed by the Ministry in March or April, 1976. He said that report set forth recommendations which formed much of the base for the Ministry's Child Abuse Programme.

That testimony by Dr. Sohn is interesting when considered in conjunction with that of Dr. Bates. Dr. Bates was one of several highly qualified experts named by Dr. Sohn as having been engaged by the Ministry in developing materials to be employed in the training of personnel in relation to the problem of child abuse.

Upon this Inquiry Dr. Bates was asked to comment upon the role of the Ministry in any such programme of education and training of personnel. His response was based on his own experience with the Ministry. He said that in 1973 and 1974 the Ministry furnished very little drive towards recognizing child abuse as a problem. He had sought the Ministry's financial assistance to distribute a brochure dealing with child abuse. He had proposed that the brochure be distributed to children's aid societies, health professionals, social workers and others in the field. He had recognized the need for such a document as a beginning of a programme to educate the recipients of the brochure generally as to the problem. The Ministry's response had been that funds were not available.

Dr. Bates testified that his recognition of the need for such a brochure came, in part, from his reading the Greenland Report. His recognition of the need came also from his contact with children's aid societies, particularly those in Toronto. He testified that the personnel of those societies knew that they needed more education about child abuse. He said they wanted something such as the brochure he proposed. He said efforts were made to set up joint programmes with the societies. It was not clearly stated, but I infer that the efforts were made by personnel of the societies and Dr. Bates and other like minded professionals.

From the tone of his testimony I gather that all of those efforts came really to naught. He said that so far as he was aware the Ministry was then doing very little in the field of child abuse. He said that it was not until 1976 and 1977 that the Ministry began to have some visibility in the area of educational programmes directed toward the problem of child abuse.

That testimony by Dr. Bates is, in my view, a strong and valid criticism of the Ministry's role in this area during Kim's lifetime. Dr. Sohn's testimony does not reduce the strength or validity of the criticism. It does not lead me to believe that the Ministry knew or recognized that at least some children's aid societies, even prior to 1976, felt a need for educational materials in relation to abuse and that such need was real.

I am satisfied that, at least until 1976, the Ministry did not provide effective initiative in relation to abuse and it did not support a qualified and interested person, Dr. Bates, who sought to do something about the need for a programme of education and the provision of some training or educational materials.

Mr. Lovatt's testimony as to the number and nature of memoranda or communications from the Ministry to the societies over the years was confirmatory of that view.

Dr. Bates' disappointment with the Ministry's activities in this area did not end in 1976. He was one of a number of professional persons across Ontario who had been seeking the organization of a seminar to bring together persons willing and able to share ideas about the problem and how it might be faced. He said that the Ministry sought assistance from him and six or seven others of various levels of expertise in different professions. That group assisted the Ministry in organizing a seminar in February, 1976. I presume it to be the one mentioned by Dr. Sohn.

While Dr. Bates did not expressly state such an opinion, I inferred he shared Dr. Sohn's view that the seminar was a successful and helpful undertaking.

But Dr. Bates' testimony as to what followed or flowed from the seminar contained one element not mentioned by Dr. Sohn in his testimony. That element was Dr. Bates' expression of disappointment as to the attitude of the Ministry towards the group of seven or eight professional persons, including Dr. Bates, who had assisted in the organization of the seminar.

In my view Dr. Bates' disappointment was well-founded. There was no testimony to explain why the Ministry acted as it did towards that group after the seminar. Like those who read this Report I am left to wonder what lay behind the Ministry's response to a generous suggestion by that group of highly qualified persons, whose assistance had been sought by the Ministry and who had helped bring about a document which formed the base of the Ministry's programme with reference to abuse.

As Dr. Bates put it in his testimony, the distressing thing following that seminar in February, 1976, was that the Ministry declined the suggestion that that group of professionals, assembled at the request of the Ministry, continue as a body to provide consultative services to the Ministry about an educational programme in relation to abuse. Dr. Bates said the group represented a considerable body of varied professional knowledge and experience across Ontario. He said the group recognized the importance that the Ministry could assume in a programme of education in relation to abuse. Dr. Bates inquired as to the reason for the Ministry's rejection of the proposal. In his view he received no reasonable answer to that inquiry. He felt, simply put, that an educational programme was not assigned any priority in the Ministry's plans.

In isolation Dr. Sohn's testimony would have led me to believe that the impetus for the seminar in February, 1976 had come from within the Ministry. It would have been an error for me to believe that. On Dr. Bates' direct testimony, which I accept, the real impetus came from professional persons in the health professions and children's aid societies across Ontario who were concerned about the Ministry's inaction and lack of direction. The Ministry simply acceded to such urgings and asked Dr. Bates and others to organize the seminar.

It would almost seem that, in one sense, the convening of the seminar was a sop given to Dr. Bates and others like him who were so concerned about the Ministry's failure to assume its proper importance in this area. By their own efforts Dr. Bates and others like him had the seminar they wanted and a report of it was prepared and distributed. That was the end of that.

I should emphasize that Dr. Bates and the others with him were not seeking payment of fees for their services in any such continuing consultative process. They would have expected only reimbursement for reasonable actual expenses incurred by them. That was the basis on which they had assisted the Ministry in organizing the seminar.

I accept Dr. Bates' testimony that he was not alone in feeling a sense of disappointment or even distress when the Ministry acted as it did towards him and the others after the seminar in February, 1976.

I accept Dr. Bates' testimony that the distribution of information, including educational materials, among and to children's aid societies and other having responsibilities in child welfare is a massive problem. I share his view that it requires co-ordination. This does not in any way detract from my acceptance of Dr. Turner's opinion as to the obligations of each social worker to keep himself or herself current with reference to practices of social work.

I share Dr. Bates' opinion that the unique relationship between the Ministry and the children's aid societies created by The Child Welfare Act would, logically, have imposed on the Ministry the duty of co-ordinating the distribution of such materials to the children's aid societies who are responsible for the protection of children. In my view the local children's aid societies, including the Society, are in many ways merely extensions or projections of the Ministry into the local communities they serve. They do appear to have some degree of local autonomy, but that seems to be largely limited to the duty and responsibility to administer and enforce The Child Welfare Act. Financially they are almost totally dependent upon the Ministry. About eighty per cent. of their operating funds are provided through the Ministry and, for all practical purposes, the provision of the balance of their funds from the municipalities is dependent upon the approval of the Ministry.

Dr. Sohn continued his testimony to summarize some of the recommendations that were contained in the report upon the seminar, "A Fifth Step." One of those recommendations was that the Ministry appoint a professional person to co-ordinate a programme to deal with child abuse. It would seem that Dr. Sohn's appointment, as of June 1, 1976, was in response to that recommendation.

Some of the other recommendations were not unlike those made in other earlier reports commissioned by the Ministry and in testimony upon this Inquiry. One recommendation mentioned by Dr. Sohn was that success in the identification, treatment, management or prevention of abuse or neglect of children would require effort within the local communities. A second recommendation was that such local effort would require inter-agency and inter-professional co-ordination. Dr. Sohn said another recommendation was that the Ministry assume responsibility to promote the assumption of full responsibility by the local communities and the integration of the efforts by the agencies and persons within the local communities.

The thrust of all of those recommendations was to place the real responsibility upon those who served at the local level. The Ministry's only responsibility was to be the promotion of the assumption of full responsibility by the local bodies and then the integration of their efforts.

Dr. Sohn mentioned two other recommendations set forth in that report. The first such had several components. It was that the Ministry undertake to provide funds for a variety of purposes including a review of how efforts could best be co-ordinated, establishment of local inter-disciplinary groups, testing of methods, research, development of professional training programmes, stimulation of the use of such programmes and promotion of public education. The second was that the Ministry seek to involve other ministries of government whose functions touch upon abuse, so that the efforts of all of the ministries might be co-ordinated. Some of the ministries he mentioned were those of the Attorney-General, the Solicitor-General, Education, Colleges and Universities and Correctional Services.

Even in those recommendations one finds the ubiquitous word "review."

Dr. Sohn then spoke of the Ministry having tried to accomplish those recommendations. His testimony was reminiscent of Mr. Macdonald's testimony. The effect was similar. He gave a description of "effort" by the Ministry and a statement of groups "devised" to serve specific functions, such as "development of co-ordinated efforts locally, the identification of needs and the development of programmes to meet those needs," which "might" include the "development of training programmes."

Dr. Sohn then followed with a list of treatment groups "either established or in the process of being established," or existing informally because of the efforts or attempts of the Ministry. He spoke of "[moving] into communities to identify allies and...to stimulate...relevant agencies to come together." He spoke of the provision of funds to local communities and the convening of seminars.

All in all it would seem that since mid-1976, about the time of Kim's death then unnoticed by the Ministry, a great deal of activity was undertaken by the Ministry. It was not for me to explore whether Dr. Sohn was describing concrete advances or a new demonstration of the statement of Petronius.

In any event, it was all too late to help Kim.

Dr. Sohn's testimony corroborates that of Dr. Bates as to the need or desire of children's aid societies to obtain information about and training in relation to child abuse.

It was that need or desire which led Dr. Bates in 1973 or 1974 to seek the Ministry's support in publishing and distributing a brochure. He was denied support.

It was that need or desire which led Dr. Bates and others to urge the Ministry to convene the seminar which the Ministry did ask them to organize in February, 1976.

It was that need or desire which led Dr. Bates and others to offer to continue to assist the Ministry. The offer was denied.

The portion of Dr. Sohn's testimony to which I refer was as follows:

> "The third area that we are involved with has to do with professional training. One of the messages that came to us loud and clear from children's aid societies and other agencies across the province when we met with people was "can you recommend a course, can you recommend a text, do you have a training package, and with that kind of information. We had bits and pieces of things we could pull together and help communities try to assemble for themselves,

> but we went to the Ministry and asked in the second year of our operation for funds to enable us to develop a training package and to test it out, and we received approval for that and we proceeded to develop a training package. We were fortunate, we thought that we had a three year job ahead of us. Let me note that we insisted taking our cue from the inter-professional seminar that met in February, 1976, we insisted on inter-professional training,.."

I am satisfied that Dr. Bates had made a correct assessment of the desire and the need for information about child abuse as early as 1973 and 1974 when he was rebuffed by the Ministry.

I am satisfied that those professional persons whose urgings of the Ministry led to the seminar in February, 1976 had been similarly correct.

I am satisfied that those who organized that seminar for the Ministry and sought to continue to provide assistance to the Ministry were correct in believing they could be of assistance. They were rebuffed.

But as late as the second year of Dr. Sohn's service as Co-ordinator of the Child Abuse Programme, 1978, the Ministry was still receiving from the children's aid societies and others the same sort of expression of a need for training and information.

In the portion of his testimony immediately following that quoted above, Dr. Sohn went on to describe how the Ministry did develop a training "package" based on one obtained "free of charge" from the United States government. That did involve variation of the American "package" to suit the situation as it existed in Ontario. That involved the retainer of several experts in Ontario.

Dr. Sohn seemed to be proud that the American package was obtained "free of charge." He made no mention of the charges of the experts retained in Ontario to adapt it for use here. Interestingly enough, one of those experts was Dr. Bates who, with others, had been rejected in 1976 when they offered their services "free of charge" if I might borrow Dr. Sohn's words.

I recognize that the specific services provided by Dr. Bates and others to adapt the American material for use in Ontario may have been beyond the scope of what Dr. Bates and those who had served with him in 1976 had offered.

Dr. Sohn's accomplishment of getting something "free of charge" in 1978 may be commendable. The Ministry's rejection of the offer by Dr. Bates and others in 1976 is not.

In 1978 Dr. Sohn was optimistic as to the development of a total training package, apparently to be based on the American model adapted for use in Ontario. The Ministry had asked a private firm to furnish a proposal for such a development, including a statement as to the cost thereof.

With all due respect to Dr. Sohn and his "free of charge" acquisition, I am left to wonder as to its actual cost. He spoke of its adaptation, its subsequent testing in Ontario, its short-range evaluation, its long-range evaluation and its possible revision thereafter.

Apart from monetary costs there was the delay from February, 1976 until sometime in 1978.

Apart from any possibility that the continuation of the organizing group of the February 1976 seminar might have brought Kim's case to the attention of someone who would recognize its true potential danger, none of this would seem to fall within the terms of reference of this Inquiry. So I limit my remarks upon it to the foregoing.

What did impress me is that in 1978 Dr. Sohn was speaking enthusiastically of the then current activities and hopes of the Ministry in the development and testing of training materials. So much of it was still in the future. It represented essentially the Ministry's response to expressions of concern voiced by children's aid societies and others in 1978. But those concerns or some very similar thereto had been voiced years earlier, and they had gone unheeded or denied by the Ministry. Was the

Ministry's response in 1978 to those concerns merely a reaction to the publicity attendant upon the disclosures of Kim's case earlier in 1978? I am cynical enough to believe it may very well have been.

Dr. Sohn was talking of the need for training of members of the professions to report cases of child abuse. That too had been drawn to the Ministry's attention long before Dr. Sohn's appointment. But there had been no effective response by the Ministry.

Dr. Sohn described such training of professional persons as being of greater priority than public education. He spoke of the direction in which the Ministry intended to proceed.

I was surprised to hear Dr. Sohn, in 1978, speak of the Ministry's "[then] taking a close look at basic research." He said the Ministry did not know enough about what was happening in Ontario. He said the same situation prevailed in other jurisdictions. He spoke of meetings between representatives of the Ministry and of the corresponding ministries or departments of other provincial governments and of the Government of Canada.

My surprise was not so much that the Ministry was "taking a close look at basic research," but rather it arose from the impression I formed from Dr. Sohn's testimony that this was a recent development. When speaking of the meeting of the representatives of the various governments he said:

> "...and we jointly discussed how we can assist each other in development of public education materials and development of research materials and that is an area that we are into now that we are beginning to take a good look at. We are preparing a proposal for the government with regard to basic research needs and that, I hope, will be prepared shortly."

That indicated to me more of what Petronius mentioned. It was another beginning and another proposal to be prepared.

Again I note that this emphasis upon research in this area does not conform to the opinion expressed by Dr. Bates. In Dr. Bates' view in 1978 there had already been sufficient research in a number of jurisdictions to enable useful and well directed programmes to deal with abuse. He stressed that in his opinion the main objective of any programme should be prevention of abuse. Management and treatment of abuse that did occur would be necessary, but prevention was the real hope.

I did not sense that Dr. Bates was suggesting that there be no further research. I understood him to be suggesting that with the results of prior research the Ministry and children's aid societies could proceed with programmes that would be helpful and the introduction of those programmes or the revision of others to correspond with the results of prior research should not be delayed to enable further research. It seemed to me that Dr. Bates was saying that application of prior information to enable actions to be taken to prevent abuse was a need greater than further research. He wanted action in the field rather than more study, planning, proposing and researching while all the time children were being abused.

I recall that Dr. Sohn had testified that abuse of children had occurred and had been recognized as early as pre-biblical times and was not a new phenomenom.

One segment of Dr. Sohn's testimony indicated to me that some of his personal opinions as a well qualified professional person were not greatly different from those of Dr. Bates at least in the area I have been discussing in the preceding paragraphs.

The segment to which I refer was not related specifically to the priority to be assigned to research in relationship to the priority to be assigned to immediate action in the field. Dr. Sohn was describing what the Ministry was doing in 1978 to encourage or assist the formation of inter-agency or inter-professional teams of people in local communities to work together in relation to abuse.

The following questions were put to Dr. Sohn and he responded as follows:

> "Q. And as I take it not that what the ministry is doing is trying to encourage the development of these teams within a local community?
>
> A. Encourage, provide resources to help them to find ways to develop it and to explore ways of developing it and to bring it to fruition.
>
> Q. And I gather from what you're telling me Dr. that you want to have one of these teams in every 47 jurisdictions?
>
> A. I would like to have more like about 20 teams in every one of the jurisdictions.
>
> Q. We can agree...
>
> A. But you realize that every jurisdiction usually has more than one small...more than one small town, or village or city in it.
>
> Q. If child abuse continues to happen, it doesn't stop while we wait for these teams to...
>
> A. You're absolutely right."

I believe that, if the last question set forth were paraphrased to indicate that abuse does not stop while the Ministry and children's aid societies continue to research and study, Dr. Sohn's response would have been equally emphatic and to the same effect as "You're absolutely right."

From what Dr. Sohn said it would seem that, at least by 1978, the Ministry was beginning to expend relatively substantial sums of money and to provide some leadership to the children's aid societies and to local communities in relation to child abuse. The Society was a major beneficiary of that beginning.

Dr. Sohn had been a member of The Task Force on Child Abuse whose report, which I have chosen to call the Garber Report, was published in June, 1978. He was asked to comment briefly upon some aspects of the functions of that Task Force and its report.

His attention was directed to the first recommendation in the report. It was that the Ministry provide standards of procedures and practices for the children's aid societies and monitor the societies to ensure compliance.

His response was that a set of guidelines was developed by the Ontario Association of Children's Aid Societies with the help of the Ministry. He said that was so because it was felt that such development would be more appropriate than development by the Ministry.

At first blush I felt that response was itself inappropriate because, in isolation, it might be taken to indicate that that set of guidelines flowed from the Garber Report. In fact the guidelines had been published by the Association in 1976. Dr. Sohn's later response removed my concern in that area.

A second concern I had about the same response was the expression of the Ministry's opinion in 1976 that guidelines developed by the Ministry would be less appropriate than guidelines developed by the Association. That concern remains. I do not understand the basis for any such opinion held by the Ministry.

It may be that Dr. Sohn meant that the children's aid societies would more readily accept and comply with guidelines prepared by the Association. If so, it is another instance of the Ministry abdicating its responsibility to supervise, inspect and advise the societies. It would be akin to the situation into which Mr. Charko put himself and the Ministry when he testified that the Ministry limited its activities of supervision and inspection because they were regarded as an intrusion upon the autonomy of the societies. I would regard this apparent abdication of responsibility to prepare guidelines with the same scorn as I viewed that portion of Mr. Charko's testimony. It is not a satisfactory fulfilment of the Ministry's statutory duties and obligations.

My criticism is even greater because the Association is a voluntary organization with no authority to require compliance with any guidelines it might have prepared. The Ministry had The Child Welfare Act as a base from which to impose its guidelines if need be upon any children's aid society that might arbitrarily choose to disregard them.

Dr. Sohn testified that the Garber Report does contain the recommendation that the Ministry develop and publish its own set of standards or guidelines to be met by the children's aid societies. He said that the Ministry was then in 1978 accepting that recommendation. The Ministry had commissioned the development of such a set of guidelines based on the experience of the societies with the guidelines published by the Association in 1976.

All of that would seem to have been envisioned in 1976 when the Association published its set of guidelines. The introduction to that document contains a paragraph stating that guidelines for practice and procedures in the handling of cases of child abuse were even then, in 1976, long overdue. The authors or compilers wrote of the difficulties encountered in establishing definitive guidelines because of lack of common understanding in definition and identification, disparities in case handling, fiscal problem with reference to preventive services and regional differences such as tolerance of abuse. They emphasized their wish that practitioners review, test, modify and comment upon the document and the guidelines with the hope that "in about a year's time" from July, 1976 it would be possible to produce guidelines which would be practical and would give some assurance of consistency across the province.

It should not have required the Garber Report to move the Ministry to follow up on the Association's publication of July, 1976. But apparently the Ministry did not pursue the matter except in response to the Garber Report published in June, 1978. In October, 1978, when Dr. Sohn testified, the Ministry had received a first draft of guidelines specifically directed towards the management of cases of abuse, but hopefully, he said, useful in the management of protection cases generally.

Dr. Sohn was asked about the recommendation in the Garber Report that the Ministry prepare standards of service for the complete implementation of section 6 of The Child Welfare Act which defines the purposes of the children's aid societies.

His response was in the cant of officials of the Ministry who testified upon the Inquiry. He said the Ministry was "developing proposals for that." That type of response is open to many interpretations. It is meaningless for my purposes.

I was somewhat surprised by Dr. Sohn's comment upon the Task Force's recommendation that the staff associations of the children's aid societies be involved in planning and policy determination. He said the Director under The Child Welfare Act had communicated with the societies to enable preparation of a list

> "so that we [the Ministry] knew which are the associations so that we can begin to deal with them."

I regard that answer as an acknowledgement of the absence or limitation of supervision and inspection of the societies by the Ministry. It seems to be in the same position as Mr. Charko's testimony that the Ministry confined its communication with the societies to communication with the local directors because, under The Child Welfare Act, the local directors are required to co-operate with the Director appointed under that statute. It seems to me that, by failing to have established communication with staff associations, the Ministry limited its own abilities to perform its statutory duties. The Ministry deprieved itself of access to a fund of experience and knowledge which would not necessarily be expressed in responses from local directors as individuals or as the corporate officers expressing the corporate opinions of the societies.

It is to me a sad commentary upon the Ministry that until its response to the Garber Report the Ministry had not begun to deal with the staff associations. That response by the Ministry dated September 8, 1978 contained the statement:

> "We [the Ministry] will, in future, be sure that Staff Associations receive their own copies [of consultation papers set out by the Ministry]."

That assurance was long overdue.

Dr. Sohn commented upon the fourth recommendation in the Garber Report. It was, in essence, a recommendation that guidelines for inclusion of data and diagnosis emphasize uniformity of reporting and that guidelines for record keeping by children's aid societies be standardized. Dr. Sohn testified that this recommendation related to the child abuse registry. He said that the guidelines he had mentioned earlier were directed toward establishment of standards of terminology and reporting. He felt that that recommendation in the Garber Report would be implemented.

The fifth recommendation in the Garber Report was that the Ministry initiate an accreditation process for children's aid societies with appropriate regulations made under The Child Welfare Act. Dr. Sohn was not aware of any action having been taken to meet that recommendation. He was aware that it had been the subject of "quite intensive discussion." Again I find no help in that response.

Dr. Sohn's comment upon the next recommendation was similar to that which I have just mentioned. He said the recommendation that the guidelines provide for rotation of staff was "being reviewed." But he went on to say that the Ministry, the Ontario Association of Children's Aid Societies and individual societies were looking at it and particularly the problems that, if it were implemented, might arise for far-flung smaller communities having only one multi-purpose worker.

Dr. Sohn testified that, even on the day he testified, he was working on a draft of guidelines for the participation of multi-disciplinary teams as recommended in the Garber Report. He expressed some concern that such guidelines might be open to too rigid interpretation whereas they should be flexible enough to reflect or accommodate conditions in each local community. He seemed to suggest that really what might be done in implementation of that recommendation would be the preparation of a document explaining what arrangements had already been tried in some communities and the results thereof so that, with appropriate consultation, presumably with personnel from the Ministry, a procedure might be devised to suit the current situation in each community.

If I have correctly understood the meaning which Dr. Sohn intended to convey I regard it as an eminently sound and practical approach. Most, if not all, of the well-qualified persons whose testimony touched upon the formalization of practices and procedures testified to much the same effect when they said that practices and procedures developed in one community might be applied in another community, with or without revision depending upon local circumstances.

The next recommendation in the Garber Report was that the Ministry require children's aid societies to initiate the formation of local multi-disciplinary teams to perform stated functions. Dr. Sohn said that recommendation was being "seriously considered" by the Ministry which was "reviewing" it as part of the legislative process in relation to Bill 114 and regulations which might be made thereunder. That legislative process led to the enactment of The Child Welfare Act, 1978. I have examined that legislation and the regulations thereunder. There is no mention of multi-disciplinary teams or anything of that nature.

I understand the difficulties that might be encountered in any attempt to implement the recommendation in a literal sense. The children's aid societies would have only the power of persuasion to obtain the participation of others upon such teams. But the recommendation was merely that they be required to initiate the formation of the teams.

In my view the formation and maintenance of multi-disciplinary teams is important to the detection, investigation, management and treatment of abuse. Some one must take the lead in establishing those teams. The Ministry and the children's aid societies are charged with the duty of protecting children. They should take that lead. From the testimony upon the Inquiry I am satisfied that other professions, organizations, institutions and agencies would be willing to co-operate in the operations of such teams.

Dr. Sohn's testimony as to the activities of the inter-ministerial committee on Children's Services was encouraging. That committee was reviewing with the Ministry ways in which professions, persons, agencies or organization subject to regulation by the various ministries of the provincial government might be encouraged to assist the children's aid societies.

Dr. Sohn was then asked to comment upon the fourteenth recommendation in the Garber Report. It was that the Ministry institute high standards for alternative care of abused children. Dr. Sohn testified that this too was being reviewed by the Ministry. He added that the Ministry was developing a training programme for foster parents and was negotiating with some communities as part of a project to demonstrate recruitment and training of foster parents. The Ministry was also testing means of providing a form of alternative care of children who had been abused. This would involve someone being in the home with the parents and the child who was abused.

Counsel then inquired of Dr. Sohn as to the implementation of the eighteenth recommendation in the Garber Report. It was that immediate protective service intervention he provided on a twenty-four hour basis. His response was simply that the Ministry had inquired of the children's aid societies as to their current practices and what would be required to enable the service to be always available. He did not indicate what the responses by the societies had been or what the intention of the Ministry might be.

He was then asked about the twentieth recommendation which was that the Ministry, through the inter-ministerial committee, request other ministries to include appropriate child abuse training content in the curricular for their respective professions. Dr. Sohn testified that the Ministry had made the appropriate request of that committee which was seeking to identify what professions, persons, institutions and the like might be required to receive such training. The committee was also seeking to determine what the nature of programmes for such training might be and the guidelines and policy with reference thereto.

Chapter XXX

The Testimony of Expert Witnesses —Dr. Robert Bates—Dr. Francis Joseph Turner

The qualifications of Dr. Bates, as a medical doctor and as an expert in the field of child abuse, and of Dr. Turner, as an expert in the field of social work, are set forth in Schedule 1-E to the Report.

Both gentlemen impressed me very favourably, not only with their knowledge and expertise in their respective fields, but also with their dedication to those fields.

Each in his turn demonstrated an interest in improving the contribution that he and his colleagues and others working in their respective fields can make to the welfare of children in Ontario and elsewhere. Each had a background of practical experience to complement his academic achievements and experience. Each had a sympathetic understanding of the position in which any person, lay or professional, may find himself or herself while working in the field of child welfare or merely, for any reason, becoming aware of situations involving the welfare of children.

Dr. Turner was asked during his testimony to express his opinion and to comment upon various incidents relative to Kim's case. In that regard he was asked to assess the actions or decisions of various persons. In making that assessment he was asked to compare or contrast, as the case may be, those actions or decisions to or with the actions or decisions which he would expect to have been taken or made by "an ordinary social worker reasonably educated, instructed, [and] diligent," in the circumstances of those incidents.

A basic concern was expressed by Dr. Turner. It was that the term "social worker" was used much more loosely than he felt it should be. He believed that some persons who were employed in social work and who were called "social workers" should not be entrusted with responsibility for certain areas of child protection. That was because they lacked adequate qualifications. However there were some functions in a children's aid society which they could adequately perform with their lesser qualifications.

Leaving that difficulty aside Dr. Turner then proceeded to express opinion and comment upon various incidents. Before testifying he had read the transcripts of the earlier testimony of Mesdames Saul, Harvey and Lo and Mr. Carter. He had also read copies of the recordings in the files in respect of Kim in the Family Services and Children's Services Departments of the Society. Those files were produced as exhibits upon the Inquiry.

Dr. Turner was asked some questions about the events in March, 1975 when Kim was in hospital with the fracture of her left humerus.

He said Dr. Singh's referral of the matter to Mr. Khattab, the hospital's social worker, was "an understandable referral." When told of Mr. Khattab's academic attainment and his claim never to have heard of child abuse, Dr. Turner's comment was succinct. It was:

"It's a shock to me, sir."

I infer he meant that he found it difficult to believe that one could attain the academic qualifications claimed by Mr. Khattab without having heard of child abuse or some corresponding terminology, such as "battered baby syndrome."

If my inference is correct, I share Dr. Turner's "shock."

Dr. Turner was asked about the events of June 17, 1975. He was cautious in his remarks as to Mrs. Dick's actions on that day. He said that they could be judged fully and properly only by one familiar with the organization of the Society. He acknowledged he lacked that familiarity. However, in his opinion, Mrs. Dick, as intake worker, had fulfilled her duties by ensuring that Mrs. Saul and Mrs. Hoad had all the information Mrs. Dick had received and that they did in fact complete the visit to see Kim. He viewed Mrs. Dick's recording for June 17, 1975 as being normal.

He was told that Mrs. Saul had been "a social worker for about five years" and had been granted the degree of Bachelor of Arts. He was asked to state "what a diligent, trained, qualified social worker should have picked up or should have done" when assigned a duty such as was assigned to Mrs. Saul on June 17, 1975.

The answer to that and supplementary questions put during Dr. Turner's response was expressive. It was:

> "Well my first hope would be Your Honour that this worker would have been alarmed and seriously alarmed that this was a critical case. It appears...that there was sufficient information available to know that we have virtually all the indicators of high risk abusage situation.
>
> ...multiple bruises and the other point that concerns me that over the last six weeks, the infant has had a broken arm on occasion and another a black eye when admitted to hospital etc. I think presuming that the agency, if they weren't able to verify that immediately would have done that in a very short time had clear indication that this was a possibility of unexplained injuries and the other factor, the repetition of them. The fact that this was not a one occasion situation would give someone adequately functioning in this field cause for serious alarm.
>
> ...they should have done it [looked into the allegations of previous abuse] if not prior to that visit, but certainly immediately after. Whether the child should have or should not have been apprehended on the spot, I think it is a judgment call but one could argue leaving the child until further information was gathered."

Dr. Turner was advised that Dr. Singh, having seen Kim, had written in his report to Dr. Jumean dated March 27, 1975:

> "I would strongly suspect that the battered child syndrome is present and if we do not protect this child at the present stage, she might end up with a fractured skull or some other fractures later on in her life."

Dr. Turner's response was that that was the sort of information that would have been learned if an investigation of Kim's earlier injuries had been undertaken on or immediately after June 17, 1975. I infer Dr. Turner meant that such an investigation should have been undertaken immediately.

Dr. Turner then mentioned another portion of Dr. Singh's report dated March 27, 1975 wherein Dr. Singh wrote:

> "It is extremely unusual to break a solid, long bone such as the left humerus, or just by changing the child's hand." (sic)

Dr. Turner then continued to say:

> "I just caught a glimpse of what he had said there is one of the real indicators are the type of injury that a child receives and here where Dr. Singh has indicated that it's extremely unusual as he said to have this type of injury and it's that pattern of injuries that do not happen in the ordinary course of the child's life that are increasingly the indicator for us and so the social worker's responsibility is to be aware of injury but certainly to look for the pattern then and the nature of such injuries and to enquire to ensure that there is at least a high degree of probability that these were accidental, or were not accidental."

Dr. Turner's opinion was that Mrs. Saul had properly recognized and reported "danger signals." Assuming Mrs. Saul to have been aware of the allegations that Kim had been injured on some earlier occasion or occasions, Dr. Turner continued his assessment of Mrs. Saul's performance of her duties as follows:

> "Well my expectation of a worker in this position would be certainly that they fulfill their responsibility of following up on the complaint and attempting to establish what was the nature of the situation. I was a bit surprised at the recording that there wasn't some more evaluative statements. I would think this is a key person in the whole process of assessing and dealing with an abused child situation - that person who makes the initial contact on the part of the protective agency or protecting agency that I would want that person to do more than report. I would want and I think it is very important that they assess...that they try and give us some indication of the gravity with which they view the situation, the...at least a preliminary estimate of probabilities here although it is very much in the realm of a judgement call....Now she does indicate that some further work - some ongoing work is required and that at least allows us to presume that she saw it as being serious."

A little later in his testimony Dr. Turner returned to his assessment of Mrs. Saul's report to Mrs. Harvey. He said that, while Mrs. Saul seemed to have indicated the need for "some on-going contact," she did not make any recommendation as to the nature or level of such contact. He said Mrs. Saul's report lacked "an evaluative component" and that "anyone who carries responsibility to report on a situation," should provide that component in the report so as to indicate how seriously she viewed the situation. In this instance Mrs. Saul had that responsibility to report upon the situation.

Dr. Turner did say that Mrs. Saul's statement in her report that:

> "this defensive hostile young mother [Jennifer Popen] should be closely supervised considering the history of the

> recent six week [incidents of earlier injuries to Kim]."

did provide a portion of the evaluation which he would have expected in the initial report from Mrs. Saul. He felt her report did not give a sufficient "indication as to how seriously she viewed the situation."

He said he would want to see in Mrs. Saul's recording her assessment of the abuse that had occurred and her assessment of what might be achieved as well as a statement as to what she felt the Society was to "supervise."

He concluded his initial response as follows:

> "...in this kind of case, what is so important is to build up the whole picture so that we can see it and so that anyone dealing with the case can get a total view of what information is available...it's their responsibility to assess that information."

Dr. Turner was asked to express his view as to what Mrs. Saul might reasonably have been expected to do about the case after she made her report orally and in writing to Mrs. Harvey who advised her that the case would be assigned to Mr. Carter.

His response was guarded because he was not aware of the exact nature of the structure of the Society. He felt that Mrs. Saul's own assessment of or her degree of confidence in the manner in which the Society functioned would have influenced her conduct. He testified that he would not have expected her to do more than make an occasional inquiry as to how the case was progressing.

I formed the impression that Dr. Turner's position in that response assumed a reasonably well organized and functioning children's aid society. As a result the tone of his response was overly kind to Mrs. Saul. Others who had examined the organization and functioning of the Society were extremely critical in their comments. Mrs. Saul, with her education and experience, should have been aware of the deficiencies or inadequacies of the Society mentioned by those witnesses. Accordingly, she should have followed the handling of Kim's case more aggresively than Dr. Turner suggested in his response.

In my view, in the light of the testimony of those other witnesses, Mrs. Saul should have inquired to ensure that indeed the case was in fact assigned to Mr. Carter or to some other long term worker and was receiving attention.

Such inquiry by Mrs. Saul, should have included discussion with the long term worker to whom the case was assigned. Such a discussion would be similar to the type of conference which witnesses recommended should accompany the transfer of a case from one worker to another. Responsibility for ensuring that such a conference is held rests on the two workers involved and their supervisor. Mrs. Harvey and Mrs. Saul were responsible in this instance. No other member of the staff of the Society, including Mr. Carter, bears any of that responsibility No member of the staff was informed that the case would be assigned to him or to her.

Dr. Turner was invited to discuss whether or not the Society should have taken Kim into care on June 17, 1975. He said that in view of the reported earlier fracture of Kim's arm he would have "understood" if she had been apprehended on June 17, 1975. He felt that a children's aid society worker, very experienced in working with cases of child abuse, aware that fractures have been helpful in identifying abuse, might more probably have apprehended Kim that day.

Dr. Turner expressed the view that an experienced children's aid society worker, confronted with a situation such as Mrs. Saul encountered on June 17, 1975, should have insisted that Kim be examined and X-rayed to assist in the assessment of the bruises which had healed and the extent of the injury indicated thereby. He acknowledged that that might have involved apprehending Kim, but he felt the medical examination could have been achieved without having to apprehend her.

The structure of the particular children's aid society would determine what worker would be responsible for arranging for such examination and X-rays. It might even have been the subject matter of a conference of all of the workers involved in the case and their supervisor.

Dr. Turner acknowledged that on June 17, 1975, believing the original complaint to have been anonymous, the Society would be aware of the risk of over-reacting to an anonymous complaint. He felt it would have been helpful to the Society if Police Constable Gander had told them that the telephone call to the Sarnia Police Force was made by Dr. Jumean.

Continuing his assessment of the handling of Kim's case by the Society on and immediately after June 17, 1975, Dr. Turner accepted counsel's statements that "someone should have opened this file" and "someone should have checked into the medical backgrounds." When asked if that was a "glaring omission" he replied:

> "Yes. No doubt about that."

He said that the identity of that "someone" would depend upon the organization of the Society. He did not identify that "someone," but continued:

> "...Once that home visit was known - once that first information was known in June, even the most basic of social work practice would ensure...would insist that a full assessment be begun of that situation and some clear decisions made and a) the gravity of the situation and b) the probabilities of various kinds of outcomes and c) what kinds of possible interventions should be instituted to get that done and what does concern here is that is the same theme that I'll probably mention a couple of times and not being aware of who saw the case as serious within the agency - obviously other people saw it as being serious outside the agency.
>
> Q. Well.
>
> A. So someone should have prepared what I would call a psycho-social history or a

> social history depending on the abusage of ..."

In later testimony he made it clear that in any such assessment the children's aid society should avail itself of all resources reasonably available in or near its community. That would include obtaining psychological testing and assessment of the parents.

He said that the social worker in Kim's case would have

> "to know what Mrs. Popen's early history [had] been socially in order to try and understand what the possible implications of that [were] for her psychological development and vice versa..."

He said persons can abuse children because of current stress in their own lives or because "they were damaged in their own past." He said the social worker faces the difficulties of combining the disciplines of psychiatry, psychology and sociology. The social worker must not only report upon the condition of the home and the mother and the occupation of the father, but must also assess the impact of all of that and the effect, if any, upon the function of the parents.

Dr. Turner expressed the opinion that the first contact of a children's aid society with an incident of child abuse is important. It is not necessarily critical because a bad beginning can be overcome.

Dr. Turner was asked to comment upon Mrs. Dick's performance of her duties at the hospital on August 31, 1975. He said that in his opinion Mrs. Dick, as a professional, was obliged

> "to make sure she came home with [Kim]"

whether by apprehension or on consent

> "...Her other task was to leave as many doors open as possible to work with this family."

He was not concerned about Mrs. Dick's decision to proceed as she did in the circumstances, that is by obtaining the parent's consent to Kim being in the care of the Society. He felt apprehension of Kim would have been acceptable in the circumstances. He would have preferred immediate apprehension. His opinion was that Mrs. Dick's decision was understandable and defensible in all of the circumstances.

Dr. Turner acknowledged that a non-ward agreement substantially such as Mrs. Dick used should, ideally, be an agreement entered upon entirely voluntarily and not as a result of any statement that if it were not signed the child would be removed. He fully understood Mrs. Dick's dilemma on that Sunday afternoon on a long holiday weekend.

He said:

> "...Yes, I think technically that worker would have been and one would have expected a very skilled person to have moved and taken wardship. I can understand somebody hedging a bit as long as out of it, she had the child until Monday. Monday I would want the agency to move in with the full weight that it had and I'm not sure that it was going after wardship."

He went on to say that, ideally, Mrs. Dick might have sought information from the hospital files that day. He felt that she would not likely have been successful. However the ongoing worker would be required to pursue that search.

He criticized the Society for not moving promptly after August 31, 1975 to alter the nature of the basis upon which care of Kim was entrusted to the Society.

In his opinion the staff of the Society should have then, in September, 1975, made the assessment of the situation and the psycho-social history such as should have been done in June, 1975 and which are described in the portion of Dr. Turner's testimony reproduced above.

He said:

> "What the agency's responsibility is through its staff then is to say: 'What is the nature of this case. What have we got here? What are the strengths of it? What are the limitations of it? What information do we have? What information might there be available? Who could know something about this.' Because once the red lights have gone on about potential child abuse, we know that one of the concerns is the gathering of information and we've seen in so many cases the post factum, there is information available and often I would think the agency should be aware that that is one of the problems in these cases of information that exists in several places and reaching out to see if it can be obtained. Now all that information isn't always available to the agency.
>
> Q. But you mean there should have been diligent efforts taken to research the background.
>
> A. Yes. Do the history as we say in the ...
>
> Q. Is that routine?
>
> A. Yes, yes, I think in any agency that's involved and especially in this other case where we've had more than enough evidence to indicate that here is a high likelihood of recurring abuse."

Dr. Turner acknowledged that the success of any such investigation, particularly in relation to medical records, would depend upon the agency's "network of working relationships" with its community and upon the skills of its professional staff and advisers. One element of such a network should be a community-based child abuse committee to enable removal of an many bureaucratic obstacles as possible.

Dr. Turner felt that Dr. Jumean's telephone calls to the Sarnia Police Force and The Lambton Health Unit on June 16, 1976 indicated his concern and his willingness to share information and to assume any risk to himself arising therefrom.

The Sarnia Police Force and the hospital staff were seen by Dr. Turner to be "very natural all[ies]" whom the Society might have involved in such an investigation.

He acknowledged that there might have been difficulties which would prevent medical persons, such as Dr. Singh, from making certain information available to the Society. That was because of concern for preservation of confidentiality of such records. Nonetheless efforts to that end should have been made and some useful information might have been obtained.

He described some further inquiries that should have been made. He said:

> "...If we were talking about a qualified social worker, then he or she should have begun immediately to begin to try and put together an assessment of who these parents were - what were their psycho-social strengths as parents - what were some of the background information that....
>
> Q. What do you mean by background information?
>
> A. Something about their just working background. Their marital status, their educational status, their socio-cultural origins and the problems that may have existed in the past. Any strengths that we may find. We're always looking for strengths and areas of stress. That's the judgement you're trying to weigh. What have I got here that ...
>
> Q. Right. So there should have been a workup on the parents ...
>
> A. Yes, very much so.
>
> Q. ...as well as the medical history of the child...

A. Yes, very much so.

Q. ...and would that be routine then?

A. Yes.

Q. Of a diligent social worker?

A. Very much so.

Q. And when you're talking about strengths and various weakness, we're talking about the interrelationship between the mother and the father?

A. Yes.

Q. And you're talking about their background as children themselves?

A. Yes.

Q. Is that routine to look into that sort of thing?

A. Yes.

Q. In a child abuse case?

HIS HONOUR: Excuse me, your response was affirmative was it?

MR. TURNER: Yes..."

and he continued:

> "...Your Honour, one of the things that may have influenced well, let me just put it in a more abstract way...may influence such cases like this. There was a period in social work practice of a few years ago that was very much present-centered - the concept that we started always where the client was in the present and that earlier interest in earlier history was not seen as important and this really represented a disciplinary struggle within the profession. My hunch is it was not operating here but there were some practitioners who

said we take them where they are today and we're not worrying about the earlier historical matters. I would think most of us are not supportive of that because we have enough evidence that although you can't predict exactly who is going to abuse, there certainly are some paradigms beginning to emerge of higher risks than others and we do know people who have had highly rejecting origins of their own have a higher likelihood of abusing than others although it's not a cause and effect. A certain cause and effect situation. I think it would be another red light that you would want to go on very clearly but we had trouble here.

Now to what extent, and this again is a question of skill and competence as this mother has emerged to me...at least from paper...I'm not sure it would have been all that easy to have put together as rich a history as cooperative verbal outgoing kind of client but there is a report later from I believe a psychiatrist who did appear to have been able to elicit a fair...the high degree of detail about Mrs. Popen's origin and it seemed to me it would have been...

Q. That is the report after she was...

A. That's right.

Q. ...convicted for manslaughter.

A. And certainly he was, he or she was interviewing in a different kind of situation but dealing with what is called the unwilling client is not an unknown role for a trained social worker. That's not a ...

Q. Right.

A. That's not a big problem. It takes skill of course."

Counsel asked Dr. Turner's opinion as to what the staff of the Society might have done in the face of the position taken by Mr. Higgins, as solicitor for Annals Popen and Jennifer Popen, that Mr. Carter was not to talk to or quiz Annals Popen or Jennifer Popen. Mr. Higgins had said such would occur only over his dead body.

Dr. Turner responded to say that his expectation was that a fully trained social worker with the degrees and status of membership in a profession would have challenged Mr. Higgins' position. He acknowledged it might have led to a "not too friendly discussion," but he felt that Mr. Higgins' statement could not be taken at face value. It might have required the Society to obtain the services of a solicitor to resolve the matter with Mr. Higgins or to ensure that the Society's personnel performed their duties properly and quickly.

In Dr. Turner's opinion, even though Annals Popen and Jennifer Popen might choose to remain silent because of the charge against them under section 40 of The Child Welfare Act, it was incumbent upon the Society to pursue this investigation and search for information as a part of its preparation of its own application for wardship of Kim.

Dr. Turner's opinion was that the Society should have been consulted by the Crown Attorney or the Sarnia Police Force before Mr. Higgins' proposal for the disposition of the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act was accepted and acted upon in February, 1976. He felt that was important even if only to assist the Society in the development of plans for Kim's future.

Dr. Turner testified that he was unable to determine that the Society had any stated goal in the management of Kim's case other than the intention that Kim be returned to her home. He described all of the recording of Kim's case in the files of the two departments of the Society as being simply reporting and recording administratively what was seen or done. In a sense it recorded implementation of the plan to return Kim. He said it was not what he would expect from a professional in that it essentially lacked the component of diagnostic evaluation and summary.

He acknowledged that Mrs. Saul's recording of a need for ongoing supervision of the family might be a "rudimentary plan," but that did not disclose if the plan was to strengthen the family or to protect Kim. It was a "very low level plan." It lacked assessment of what had happened to Kim and what might be accomplished and what was to be supervised.

Mr. Turner said Mr. Carter too had risked an opinion when, in his recording under date September 1, 1975 to February 29, 1976 prepared after Kim's case was assigned to Mrs. Lo, he wrote that Jennifer Popen was a proverbial liar. Dr. Turner felt the paragraph of the recording, marginally described as "Further Points of Clarification," did go part way to what he felt was required. It did raise some questions, but it lacked specificity and was not a plan such as should have been prepared in a case such as Kim's.

He said the absence of stated goals made it difficult for anyone to assess the performance of the Society's personnel, both in relation to the adequacy of the goals selected and to the adequacy of the actions taken to achieve them.

Counsel asked Dr. Turner about the procedure which is normally followed to remove a case from one worker and to assign it to another. Dr. Turner's response assumed an agency of reasonable size wherein everyone would not know something about every case in the agency. That assumption would embrace the Society.

Dr. Turner said that such a transfer of responsibility required "some very clear transfer type of process," including a conference variously called a "case conference" or a "transfer conference." He said such procedure must have a formal structure. It serves several purposes. It enables the present worker to complete various items of assessment, recommendation and recording which may be outstanding. It enables the briefing of the succeeding worker. Dr. Turner felt that was an essential function of the procedure. It enables the agency to review its plan for the case to identify areas of uncertainty or absence of information.

The procedure facilitates a prompt and effective transfer, planned and executed and recorded in an organized fashion. That is beneficial to the agency and to the client or clients being served. It removes the need for the new worker to begin again from "day one." That is beneficial to everyone "administratively and professionally and therapeutically." In some cases, "especially if there are some difficulties around relationships," it might be desirable for the present worker and the incoming worker to carry the case together for a short time.

Dr. Turner was asked to comment upon Mr. Carter's testimony to the effect that Kim's case was transferred from him for "ethnic" reasons. Dr. Turner said that in some instances a worker might be chosen for a particular case because of his or her sex, colour, religion or ethnic group. His reading of the Society files gave no basis for any such consideration in Kim's case.

He said that if there was some particular reason why there would be greater affinity between Jennifer Popen and Mrs. Lo than between Jennifer Popen and Mr. Carter, Mrs. Lo might have worked with Mr. Carter or the transition might have been gradual so as to enable an informal sharing of information by Mr. Carter to Mrs. Lo.

In Kim's case there was no sharing of information. Dr. Turner felt there should have been. He could not understand why there was not.

He concluded by saying:

> "As a very general observation, unless there are very clear lines of responsibility in the family, I think we always have some question about unnecessary transfer of cases.
>
> Q. Yes.
>
> A. I think that as a practice, I would like to see the case stay with the same group of people.

> Q. Would that be more particularly applicable when we're dealing with child abuse cases?
>
> A. Yes..."

Dr. Turner was asked to comment upon the assignment of Kim's case to Mrs. Lo. He said that he had "very grave concerns" if the word "assignment" in the question meant the giving of considerable responsibility for the case.

He went on to say that someone such as Mrs. Lo might very properly be part of a team of workers assigned to a case such as Kim's. Such a person would be an added resource. He continued that comment as follows:

> "...but I am increasingly convinced and the evidence is overwhelming that we need our ...absolutely most qualified people on these cases and that in no way is going to ensure that we won't make mistakes, but it certainly is going to result in cutting down on mistakes being made.
>
> I would want to know and hope that Mrs. Lo received at least some basic orientation to the nature of child abuse cases and one thing that is very much on our side in these days is that because of the very high interest in this type of case, there is just an abundance of excellent literature around that would be useful for someone - even if they did no more than two or three weekends of reading on it would be at least a minimum orientation to it.....And I'm not saying that the Mrs. Los of this world cannot be helpful in this type of case but it's even more serious if we have assigned them to take on these responsibilities without preparing them for them.
>
> What I wished this agency had or would have had would have been something like a child abuse team. The literature is very much supporting that this is an important thing - a team that can be called together when we have a case with all the indications

> that this one appears to have had to ensure that the thing is monitored all through it and that even if, from time to time, someone like Mrs. Lo has to take some responsibility in it, that we have the back-up for her of all the competence and skill and knowledge that is available. If we can't always afford to put fully trained people as the first-line workers here, that at least we have provided them with a back-up that will permit us to monitor and I'm very, because of the interdisciplinary nature of these cases that is so clearly evident here, I'm of the very firm opinion that agencies should move to these type of teams.
>
> The advantage of them is that they don't have to work at...I don't know the in-take of that agency but this is not something that happens everyday of the week and because of that, you have a group who can come together because of the extraordinary components of the case to ensure that everything is being done."

In cross-examination Dr. Turner was told that Mrs. Lo was classified and employed as a social worker I within the meaning of the Regulations made under The Child Welfare Act. He was asked how he would see her being used in a children's aid society.

His reply was phrased to express his belief that, before he could adequately decide upon the nature of tasks which could normally be entrusted to Mrs. Lo, he would require more information as to her knowledge and qualifications and particularly her educational qualification and experience. He would want to know her strengths and "deficits" or limitations and whether provision could be made to compensate for any limitation as by arranging for her to be closely supervised. He would want to know that some assessment had been made to gauge the nature of any case which might be given to her.

He was given some information as to Mrs. Lo's educational qualifications. He was told simply that she held the degree of Master of Arts in

Education and while with the Society she took an "upgrading course."

He was told that, having joined the staff of the Society on December 5, 1975, she was given responsibility for Kim's case about February 22, 1976. It was her first case.

Mrs. Lo's evidence was that she held a Master's degree in Elementary Education granted by the University of Connecticut in 1972 following a Bachelor's degree granted by Taiwan University in 1970. She had no training in social work, but her course in Elementary Education contained sections on child development, social psychology, sociology and psychology and characteristics of emotionally disturbed children. She had worked as an office clerk following her graduation. She did not mention any "upgrading course," but did say that she understood from Mrs. Harvey that she would require a year's training before she could be regarded as an experienced social worker.

Dr. Turner was not made aware of all of that detail. What effect it might have had upon his reply is unknown.

His response was direct and critical. It was transcribed as follows:

> "That's frightening to me. That's the only term I could perhaps. It seems to me that without a lot of knowledge of who she was and her knowledge and the training and prior experience that if it was as simple as that, then I would find it most difficult that an agency would use someone in that capacity unless they were desperate and it was an emergency and there was no other person available. I mean there would be some extenuating reasons why you might have to say - get out there and do something. It seem very premature to me."

He was then told that Mrs. Lo visited the Popen home regularly and discussed the situation with Mrs. Harvey her supervisor, who did not visit the home. He was asked to comment and did so as follows:

> "Yes it is again suprising. What I would hope especially in this type of case as we have to develop, I would think that even if this was a fully qualified person, a case that apparently had this risk or a case with these kinds of risks that they would ...that probably she would work with a more experienced person at least through a couple of cases like this and I'm surprised that she would visit the home alone without anyone working with her closely on it. I could see her visiting the home alone if someone else was also visiting in another capacity or something like that but it is surprising."

Dr. Turner was asked to comment upon the recordings written by Mrs. Lo. He said they

> "appear[ed] to be good reporting in the sense [of] 'go out and see what it looks like and come back and tell me.'"

He said a professional person is expected to do more than that. He said a professional person would set forth his or her perception of the case and all known facts and information and make a statement as to what is thought to be happening. Dr. Turner said Mrs. Lo's recordings lacked "the diagnostic evaluative component," they told what she said went on, without any interpretation of what she saw as being significant.

Dr. Turner expanded that comment so that it applied to all of the recordings in the files of both the Family Services Department and the Children's Services Department of the Society. He felt they were merely "reporting and administrative accounting." They were not what he would accept as being "a professional case dossier or case record." They lacked any statement of clear goals and the means to achieve them. They lacked comment on progress or lack of progress, on information desired and on wishes as to what might occur. Dr. Turner acknowledged that some of that might be surmised from the material, but one could not really read into it the goals the social worker sought to achieve. Without knowledge of the goals, one cannot assess whether what was done was good or not and cannot determine whether or not adequate goals had been selected.

Dr. Turner was asked if the recordings indicated that a plan for the management of Kim's case had been devised as required by the Regulations made under The Child Welfare Act. His response was that the only plan he could see was to return Kim to her home and there was not much doubt about it. He felt that the recording essentially set forth implementation of that plan rather than the plan.

Dr. Turner acknowledged that Mr. Carter's recordings do contain some evaluative statements and expressions of his opinion and suggestions as to areas in which information was lacking. While Mr. Carter wrote of things to be done it was more in the sense of management rather than in the sense of devising a plan.

In cross-examination Dr. Turner was asked whether his evaluation of Mrs. Lo's performance should have been affected by her lack of expertise and experience. He was not prepared to agree that, within the limits of her expertise and experience, she had done a good job. He analogized to the situation of one who had never driven an automobile being permitted to drive one. He said one might say the driving was "not bad for a beginner," but would not say it was "good" driving or even adequate driving.

Dr. Turner said he criticized Mrs. Lo's performance. She should not have been placed where she was.

In the light of the circumstance that Mrs. Lo reported to Mrs. Harvey and Mrs. Harvey made the decisions, Dr. Turner's criticism was extended to be a criticism of Mrs. Harvey as a professional.

Dr. Turner adverted to his earlier testimony to say that a community-based child abuse team involving other institutions and professions provided some advantages over a child abuse team composed of personnel from only one agency. The community-based team helped to remove "red tape," inter-agency rivalry and professional jealousies.

He supported even the concept of a smaller child abuse team within the one agency. It can be convened quickly. The worker intensely involved in a case may miss some important part of it. There is an advantage to having someone in the background "to keep the broad picture."

Dr. Turner was asked to comment upon the fact that the Society was not represented by a solicitor in any of the proceedings in respect of Kim in the Provincial Court (Family Division) of the County of Lambton during her lifetime.

He said that it was common, "especially [in] the more routine court appearances, if one can ever talk about them being routine," for children's aid societies to be represented by members of their staffs, called "court workers," who were not solicitors. He said that involved some risk.

When it was suggested to him that Kim's was "a notorious case even at that time" and was one where the court worker should not have appeared on behalf of the Society, he replied:

> "Yes, yes, I have only surprise at that one."

I interrupted to ask Dr. Turner if he would regard Kim's case as being a "routine case." He replied:

> "No, I would think one of the underlying discomforts I have is it the theme I referred to earlier Your Honour, is how worried was the agency about the possible outcome of this case. I think in view of its potential for its explosiveness in so many directions that the agency would have taken every possible step to ensure that everything was done as carefully and thoroughly as possible."

He explained that that would have been his view of the matter in 1975 and 1976 because even then it was known that a lot had occurred in the case.

Dr. Turner was asked to comment upon Mrs. Harvey's testimony to the effect that, at a time about or preceding the hearing of the Society's application for wardship of Kim in February, 1976, she had decided that Kim was to be returned to her parents. He was aware that Mrs. Harvey was a supervisor in the Society.

He appeared to struggle to find some basis which might have supported such a decision. His reply, interspersed with supplementary questions, was:

> "A. No up until then, I think all we have was indications of potential trouble.
>
> Q. Yes. Negative factors and lack of information.
>
> A. Yes and that is as I've said several times, Your Honour, is the most concerned as I think in your assessment it's your strengths, your limitations and what are the gaps. What don't I know here that might worry me and I think given the bad news and given the gaps in the information, it's hard to imagine coming to a decision to gamble on a possible favourable outcome. And the gamble is the word because we do know that all parents don't necessarily continue to abuse but here we had enough of a history of abuse that it wasn't...it was clearly not one of the one incident cases that we sometimes meet. We had at least...
>
> Q. One incident of abuse.
>
> A. Yes, we had at least four I think by then - three or four.
>
> Q. And perhaps more.
>
> A. Perhaps more."

In another response to a similar question he said he could not see how Mrs. Harvey could have made that decision then and he found it "a most surprising and troubling position." He said he could see someone such as Mrs. Harvey setting Kim's return home as a goal to be achieved in the long term, perhaps two or three years, but he was worried because Mrs. Harvey's decision seemed to be "a very clear decision." The decision was all the more surprising in the light of Mrs. Harvey's testimony that she suspected Kim had been abused by Jennifer Popen and there was not yet any explanation for the injuries.

He continued to say:

> "...It would be then...mandatory is the word that comes to mind from a professional responsibility viewpoint to review all the information and to consult with one's colleagues, either within or without the discipline to ensure that this decision that she had arrived at is one that appeared to fit the information that we had. I think because of the risks involved, you would want to be sure that you had arrived at the correct decision because the information as we understand it seems to be contradictory to the goal to return the child home so you would want to be awfully sure that you had a lot of reason why you had reached such a decision."

Dr. Turner's attention was then directed to Mrs. Lo and her performance of duties. He said that in an earlier stage of the development of social work the social worker was referred to as the friendly visitor. From reading the recordings which Mrs. Lo placed in the files at the Society, Dr. Turner sensed that Mrs. Lo was such a person, a friendly visitor to Jennifer Popen, one who was

> "very well meaning...concerned about the family...trying to do her job of relating to the family and helping prepare the family for the return of the child [Kim] which seems to have been the only goal that was evident there and I think friendly visitor without...with a naive quality about it but it could well be a lack of knowledge and a lack of skill."

I accept Dr. Turner's assessment of Mrs. Lo and her activities relevant to Kim's case. She had good intentions and she tried to do what she felt was required. Her attention was directed to the one end, Kim's return. She lacked the skills and knowledge and experiences to develop and expound any other goal. She certainly was a friendly visitor, and was concerned for the well-being of the Popen family, but, with all of that, she was naive. It appears that until July 26, 1976 Mrs. Lo did not realize that Jennifer Popen might have been deceiving her.

Dr. Turner went on to say that the recording made by Mrs. Lo indicated that some sort of relationship, contrived or not, was developing between Jennifer Popen and Mrs. Lo. He said there were indications that Jennifer Popen was "opening up a little bit" to Mrs. Lo. He said that the recording implied a "little bit" of the history which he felt should have been prepared by the Society. This led Dr. Turner to believe that it would not have been difficult for the Society to have prepared that history.

In that connection, Dr. Turner mentioned particularly Mrs. Lo's recording under date of February 27, 1976. She set forth there some of what Jennifer Popen had told her. Dr. Turner spoke of Jennifer Popen's references to her parents and hard times in her past. In his opinion that would have given Mrs. Lo an opportunity to pursue the history.

I have read that portion of Mrs. Lo's recording, it is part of Schedule 2-E to the Report. All that Dr. Turner mentioned in his testimony is there with some specific details. And there was more, including reference to Annals Popen's "drinking problem."

The first sentence of the second paragraph of that recording is "Jennifer [Popen] was very talkative today."

I share Dr. Turner's opinion that with Jennifer Popen in a talkative frame of mind a social worker possessing reasonable skills, knowledge and experience could have exploited the situation to gain information from her to form part of the history of the family.

Dr. Turner said that Mrs. Lo did not capitalize upon the opportunity then afforded to her. He said:

> "I think it didn't register with her..."

Dr. Turner noted that Mrs. Lo's recording contains no reference to "those very serious events [in Jennifer Popen's life as a child in Jamaica] that came out in the psychiatric investigation."

Dr. Turner observed that Mrs. Lo's recording, written in a "friendly visitor" style, show that she seemed to accept rather naively what Jennifer Popen told her. He spoke of the "unevenness" between the talkative, co-operative almost friendly Jennifer Popen described in that recording and the "hard indication" of more than one incident of abuse to Kim. In his opinion a social worker should have been quite sceptical of a lot of what Jennifer Popen said, but there was no indication that Mrs. Lo questioned what she was told.

Mrs. Lo's recording contained only one item which Dr. Turner described as forming part of the "assessment component" of a case record. It was found in a paragraph entitled "assessment" and was the penultimate paragraph of the recording under date February 27, 1976. In Dr. Turner's opinion the paragraph was "really not assessment," but it concludes merely with Mrs. Lo's expression of lack of understanding, wonderment and uncertainly as to whether she really knew what the situation was and whether it was beyond her.

Dr. Turner then turned to the reference in Mrs. Lo's recording under date of May 7, 1976 wherein she wrote of the decision to return Kim to her home on May 27, 1976, but to discontinue her visits to her home in the meantime. He felt that was a surprising decision and contradictory of the recording under date of May 6, 1976. In that earlier recording Mrs. Lo wrote of deciding that Kim

> "should either be returned home as soon as possible, or home visits be stopped and Kim be returned after her parents are adjusted to the new baby."

Dr. Turner recognized the validity of consideration being given to Kim's return, but he found the decision to discontinue preparatory visits to be "quite surprising."

In that same recording under date of May 6, 1976, Mrs. Lo had written:

> "Her [Kim's] behaviour regressed every time after her visit at home."

Dr. Turner regarded that as a matter of some significance, a signal that a social worker would be looking for. He felt it was no more than that, but it should have been analyzed. The recording contains no such analysis or statement of conclusions drawn from the observation. Dr. Turner spoke of a number of questions that might arise in connection with the observation. He concluded with the sentence:

> "and at least they noticed that it wasn't going well, but how they interpreted it is what we don't know."

Dr. Turner expanded his comment to acknowledge that observation of the relationship between Kim and Jennifer Popen had been made by Mrs. Saul on the very first visit by the Society's personnel on June 17, 1975. Mrs. Saul had written in the recording in the Society file under that date:

> "I [Mrs. Saul] was amazed at how upset the child was when Jennifer [Popen] held her and in particular, prepared to feed her."

Counsel referred to the procedure followed by the Society in deciding upon Kim's return. Dr. Turner said that the procedure should depend upon the organization of the children's aid society. Some one would have ultimate reponsibility, but, if there were a collegial meeting, the views of all present and the positive factors, negative factors and risks should be thoroughly reviewed. The method of operation of the agency would determine which worker's view would have the greater weight. He did not appear to be critical that Mrs. Harvey's department had supremacy in Kim's case.

Dr. Turner was not unduly perturbed when advised of Police Constable Wyville's remark to Mrs. Harvey, in the presence of others, in February, 1976 that, if Kim were returned to her parents, she would be dead in three months. He said any such remark would have to be heard and weighed by a diligent social worker in the light of all other factors and in the light of Police Constable Wyville's knowledge of the case. He agreed that such a comment from a police officer would be "a red flag," particularly if the Society had known the officer, worked with him and developed a respect for his opinion. Even if the children's aid society involved had such a relationship with a police officer who expressed such a comment, it might still be appropriate for the children's aid society to disregard the caution because of the weight of other factors.

Counsel asked Dr. Turner to comment upon the fact that Kim was not completely undressed during any of Mrs. Lo's visits. Dr. Turner said that it was common for a social worker in such a case to be accompanied by a nurse during such visits. He felt that practice would have been desirable in Kim's case, especially because there was

> "more than enough indication that it had been more than the chance occasion abuse."

and because of the appearance in appropriate literature of suggestions that abuse is a recurring thing. The Society was trying to decide whether or not Kim was being abused; so its plan for Kim's care should have contained some provision for her to be examined and assessed regularly, perhaps bi-weekly or monthly. The exact nature of that provision depends upon a variety of factors and is a matter of professional judgement.

In summary on that matter of absence of examination and assessment, Dr. Turner concluded by saying:

> "...you would have to question that it was not ever done whether by Mrs. Lo or a nurse."

and

> "...the concern is that it was not done. I'm not too prepared to be firm on whether Mrs. Lo should have done it each time or not. The agency [the Society] should have ensured that it was done some way."

Dr. Turner expressed the thought that even if Mrs. Lo had examined Kim she might not have recognized some injuries.

Dr. Turner said that some of the injuries revealed upon the post-mortem examination, which would not have been seen unless Kim's clothing had been removed, were "not uncommon" and that social workers must be very alert with respect to that type of injury. It would seem that reference was to the injuries to Kim's pelvic, vaginal and rectal areas.

In response to my question he enlarged upon that to say that, even in 1975 and 1976, it was known that certain injuries, such as particular types of fractures, were almost invariably the result of abuse. He said there was need for co-operation between physicians and social workers. He suggested that the Society should have inquired of a paediatrician as to how Kim's fractures might have been caused.

When asked about the absence of any plan or arrangement by the Society for the regular medical examination of Kim, Dr. Turner replied:

> "A. Again, most surprising to me and I don't have a clear recommendation that this should have been done rather than that. I can imagine four or five ways one could have arranged this, but surely in view of the risk and in view of what we know from other cases, that parents can learn to hide these injuries and these injuries we know were recurrent in this case. You've already heard that that was clear. It is most troubling that some arrangements weren't made to...for some regular kinds of assessments. In fact, one could have built into your plan with the case but it could have been done a facilitative way where the mother came to the agency with the child and used that...could see her and the child being checked or else you could [do] it in different ways and the other troubling factor is that the worker did record the statement of the mother and the father and that the child was hurting herself. It should have been done without that and with

> that further indication that that was happening, it's just impossible not to wonder why it did not happen."

Various portions of Mrs. Maughan's monthly reports were mentioned to Dr. Turner and he was shown particularly her report for the month of July, 1976. In it Mrs. Maughan wrote under date of July 18, 1976:

> "The atmosphere was so charged with resentment and anxiety that I confronted the Popens immediately on the obvious change in feeling from our previous contact. After an attempt to ascribe the change to trivialities, they decided to trust me with their feelings which I feel are totally justified. Mrs. P's treatment by a representative from another community agency is humiliating to a proud woman who has committed no crime and is not being shown the courtesy she is entitled to."

Dr. Turner testified that that comment by Mrs. Maughan reflected a common problem. The problem arose because our society has a rich array of resources to assist people. But the resources and agencies are complex. There is a danger that there may be an overlap or a gap. Some people may be overserved by the agencies, others may be underserved. Inevitably strains develop between or among agencies.

Dr. Turner said that it would be desirable if competition or conflict between agencies could be removed, but he recognized that they do exist. He said that demonstrates the need for ongoing dicussion by all persons engaged or involved in any case. He said that ways must be found to overcome the problem of workers from different community agencies giving one family conflicting advice or opinions.

Dr. Turner stressed that the needs of the persons being served required that the serving agencies work together in co-operation. He felt that a satisfactory level of co-operation had not always been achieved. Jurisdictional problems still exist. Agencies tend to discount information from others or simply fail to inquire of others.

Dr. Turner said that all of that often results in the client being underserved. In his opinion Kim "was very much underserved."

Dr. Turner spoke of the case of Maria Colwell in England which had attracted interest in child welfare circles in Canada. In that case a committee was appointed to inquire into the circumstances surrounding the care and supervision of the child. The committee's report was published in 1974. That report dealt at length with the matter of inter-agency co-operation and inter-agency difficulties. Dr. Turner said that such difficulties were the result of many factors. Some of those factors were rooted in the personalities of the personnel of the agencies. Some were caused by rivalry between agencies seeking funding from a common source.

Dr. Turner would not have expected children's aid societies in Ontario in 1975 and 1976 to have been aware of that case. He did say that he and others who read the report upon the case realized that, with some changes in terminology, it could apply to any children's aid society in Ontario.

He suggested that the case of Maria Colwell was a leading case. Social workers were the expert witnesses. Social workers were the most severely criticized for their handling of the case.

He said that while the Maria Colwell case provided a base for much knowledge, some of the messages contained in the report thereon had not yet been heard in Ontario.

Certainly they had not been heard, or, if heard, had not been acted on by the Society before Kim died.

Dr. Turner mentioned a different type of case which arose in the United States of America. In that instance over twenty community agencies provided services to one family and each agency had little awareness of what the other agencies were doing. *A fortiori* there was little co-operation among the agencies.

In Dr. Turner's opinion co-operation between and among agencies can most comfortably be accomplished at the level of the individual professional workers. He felt that was where co-operation would be operational.

He then went on to express what seems to me to be a very sad commentary, the truth of which was borne out by testimony upon the Inquiry. As recorded in the transcript of his testimony, he said:

> "...I think it is that humility that every professional must accept that he or she doesn't know everything about every case and I think that that is why it is so difficult to get at it sometimes...that there is no one who who isn't for cooperation. Everyone is...there is no one who will not support this but we've had terrible time in operationalizing it and we become quite precious about our cases and it's just a vested interest because I think the testimony that others have given here ...we're very much in an era where a question of confidentiality and access to public records is just so much to the fore that people are reluctant to share information without being aware of what the implications of this might be. Especially since so much professional judgement is a ...it's very nature judgement. The physician who says 'I won't go to court, but I'm pretty darn sure this elbow could not have been broken in this way.' The social worker who says 'I just know there is something wrong in this family and we've got to do something about it.'
>
> One thing that has been working, although the size of the community is a factor, is community-based child abuse teams. I spoke earlier this morning, Your Honour, of the responsibility of agencies who have this responsibility be it hospitals, or children's aid societies to have an internal multi-discipline teams who can move quickly and clearly on these cases. I see some advantage too of cross agency voluntary, not legislated, child abuse teams and these are working...where the community really commits itself to sharing responsibility

and where the jurisdictional fights can be fought out not over cases where how can we find a way of making sure this doesn't happen. I know there was some very exciting developments taking place between say hospitals and children's aid societies where information is shared...where the police are finding ways of sharing information in a way that both protects the rights of clients and society and on people who make complaints as well as ensuring that we don't lose cases. Whether we should legislate it and the whole question of whether there should be penalties for failing to report and this type of thing obviously is being fought out now."

A little later he continued:

"A. But the problem is that...it's so easy for me to say it of course...what we want is to know about these cases the first time somebody shows a concern, not the sixth time or the fifth time. It's when this teacher is just sufficiently convinced of the young child in nursery school that that bruise is to be noted. When the nurse at the clinic, or the social worker and the difficulty here is that these are impressions and it is to find ways that we can identify and at least begin to gather this information because so many of the things that we get into situations where we must report and then people are going to have to wait until they are very certain before they're going to report.

So I guess I'm somewhere between that the legislation should be stronger but we must through our professional associations just keep working on this whole process and the process of training professionals of this responsibility to work together.

But that's not a new one Your Honour. That's been a problem for many years in our society."

I infer from Dr. Turner's testimony that problems such as arose in Kim's case have been known to exist for years. People speak piously of trying to overcome them by co-operation, but in practice, perhaps regardless of the agencies or professions involved, complete co-operation is difficult of achievement because of the particular views, concerns or interests of the agencies and professional persons and because of external factors.

Counsel referred Dr. Turner to Mrs. Lo's recording in the files of the Society where, under date June 17 to July 6, 1976, she had written:

> "Jennifer felt that Kim is playing her trick of one parent against the other again. Sometimes Kim would be very hard to discipline in the daytime but when Mr. Popen came home from work she would become a sweet little girl that Mr. Popen could not believe what Jennifer had told him about Kim. Since Kim was an active child, she often bumped into things and hurt herself. Mr. Popen was not happy about it and thought Jennifer should watch her more carefully. He said he did not mind if supper was not ready when he was home from work but Jennifer should see to it that Kim did not get hurt. He was afraid that C.A.S. was going to take Kim again.
>
> Several days later I was able to confront Mr. Popen with this, and reassure him that we fully understood children did get hurt accidentally, but he should be practical and realize that Mrs. Popen could not keep her eyes on Kim all the time."

Counsel inquired as to the significance the matters mentioned therein should have for a "reasonably diligent trained social worker."

Dr. Turner's reply was a damning observation upon the performance of the Society and particularly Mrs. Harvey. He tended to excuse Mrs. Lo somewhat because of her lack of experience. He felt that Annals Popen knew all was not well and tried to tell Mrs. Lo.

His entire response, with two short questions interspersed for clarification was:

> "A. I think in view of what we knew about this family up until this point and that this was probably...I have it marked in my notes...one of the most frightening sentences in this record. That we at least had indication that there were some other injuries taking place and the term, Your Honour, is almost classical, but that the parent frequently says the child has a habit of bumping into things and that very often is an indication of further abuse that has taken place and too, what is troubling of course is that it was heard and reported and I'm not sure you could expect that Mrs. Lo should have appreciated the significance of it. That I think is probably not...
>
> Q. In view of her lack of experience?
>
> A. Yes, very much because it is such a low level indicator...not a low level indicator but such a hidden indicator, but it's a well known indicator that one should be looking at...that one should have worried about this a great deal and I would presume whoever read this recording should have responded to this very quickly.
>
> Q. The supervisor should have picked that up.
>
> A. Oh yes absolutely. I think, if I can venture an opinion, it sounds like the father knew it too...at least, knew something was not well and told the worker that.
>
> Q. Or tried to tell her.
>
> A. Tried to tell her."

On the testimony of some of the personnel of the Society, counsel suggested that Mrs. Lo's notes might not have been transcribed promptly even though she reported orally to Mrs. Harvey.

Dr. Turner's response was to the effect that to prevent any delay in recording of information some agencies have developed systems, stringently enforced, to require the transcript to be prepared right away. He said that was because a worker might observe and record something, but the full significance of the observation is not realized until "someone else," presumably a supervisor, reads the recording.

Dr. Turner was asked to comment upon Mrs. Lo's recording under date July 7-23, 1976 where, in part, she wrote:

> "On my last visit we talked about Jennifer's fear towards C.A.S. Realizing that I was able to acknowledge her feelings, she honestly admitted it and we spent quite a while discussing the subject. It was indicated that C.A.S. is not asking for either a supervision order when Society wardship expires. I will be visiting on a friendly and supportive basis."

He replied that, in his opinion, there was no basis upon which Mrs. Lo, at that stage of the development of Kim's case, should have decided that the Society did not wish a supervising order. He said:

> "...one can only be surprised at that kind of statement."

When it was put to Dr. Turner that Mrs. Lo was reporting to Mrs. Harvey after every visit to the Popen home and that Mrs. Harvey was making the decisions in Kim's case and that, therefore, his criticism should be of Mrs. Harvey and not of Mrs. Lo, he replied:

> "Yes, I have no problem with that, my criticism certainly professionally is to ...as a colleague, Mrs. Harvey, yes."

Dr. Turner was asked his opinion as to whether a charge against parents under section 40 of The Child Welfare Act, concurrent with an application by a children's aid society for custody of the child mentioned in the charge, should be joined with and heard jointly with the application for custody. I infer from his reply that he feels each situation must be viewed upon the basis of its facts before one could decide whether or not to join or consolidate the two proceedings so that they would be heard together.

Dr. Turner had some reservations upon the advisability of joining the two proceedings. He felt that some social workers, in the setting of a prosecution as opposed to an application to declare a child to be a child in need of protection, might be inhibited in expressing their professional opinion or their testimony may appear weak when viewed from the perspective of the standard of proof required upon a prosecution. His fear was that in such a setting the best interests of the child might not be the paramount concern of everyone involved. In such a circumstance he would recommend that the two matters proceed separately.

In summarizing his testimony and opinions in relation to the subject matter of the Inquiry, Dr. Turner expressed his constant concern as to the competence of persons who are responsible for the management of cases of very violent abuse of children. He said this was a problem for children's aid societies in relation to their resources.

He said that persons charged with such responsibilities should have full and ready access to all available knowledge, skill and research in the field. While recognizing that he, employed as he was, might be criticised by others, he recommended that:

> "every person carrying a social work function in Ontario should have a Master's or a Doctorate degree in social work."

Even if that were not so, he felt that in Ontario those who have the responsibility can indeed do better than

> "we have done in setting out some basic requirements and making sure that people meet them."

In his opinion responsibility for competence must lie upon the individual as well as the agency. He suggested that, in the event of incompetence, the individual should be subject to sanction. I inferred that he felt that presently there was no sanction that might be imposed to seek to prevent the recurrence of any "bad" service by an individual.

Dr. Turner said that he was not aware of the extent to which children's aid societies had used available knowledge and the "rich literature now developing in the whole field of child abuse." He was not aware of the extent of the Society's library or even if it contained "basic texts on child abuse." He was not aware of the use to which that library was put. He spoke of training programmes available and used in Ontario to assist agencies whose personnel were less than fully-trained to upgrade themselves.

In that area I must note that there was no testimony to the effect that the Society had a library of any sort, let alone a library with texts, basic or advanced, on the subject of child abuse. No employee, officer or director of the Society made reference to any such literature or its use within the Society. No one cited any literature as a basis for any decision or action relating to the management of Kim's case. No one spoke of any literature even having been considered in relation to any such decision or action.

As to the use of training programmes the most telling testimony was that of Mrs. Farina. She quoted Mrs. Harvey, whose role in the Society was so dominant, as having said that the Society would not send anyone to a seminar sponsored by the Ontario Association of Children's Aid Societies to assist personnel of children's aid societies who were employed as court workers because "really the [Ontario] Association [of Children's Aid Societies] had nothing to offer that would be of help to this Society."

Not only was that the most telling testimony upon the point, it was virtually the only testimony. There was no specific testimony as to any programme or materials for the in-service training of the Society's staff.

Dr. Turner moved on in his summary to question how the Society had kept, managed and used its records in relation to Kim's case. Because those records lacked evaluative material he wondered if those of the staff of the Society who were involved with Kim's case recognized it as being as serious as it was. As he put it:

> "...I think it is one thing to make a judgment call that this is critical and we're prepared to take a chance for the following reasons. It's another thing to make a decision not even knowing that you were playing with dynamite in the case and to have made a decision that this agency is committed to the enhancement and unity of family life and we'll always, regardless of the situation, work to putting families back together again. That's more philosophy than it is good professional knowledge."

That latter really expressed what seems to have happened. Mrs. Harvey, and through her the Society, was primarily committed to returning Kim to her parents. She did not recognize the dangers inherent in that commitment. When they were suggested to her she chose to ignore them.

Dr. Turner commented upon the action of the Society in taking Kim's younger brother into care following her death. He felt it was an action that should have been taken as "quickly as possible" to ensure that the Society knew what "the total situation was." He felt that section 20(1)(xii) of The Child Welfare Act would have been applicable and he would have had "no hesitation in enforcing it" because of what had "apparently happened to Kim."

Dr. Turner's understanding of statistical and research material available to persons engaged in the field of child welfare was that children were at high risk of abuse during the first two years of their lives with the risk reducing in the third and fourth years. After that they become more mobile and there was greater opportunity for others to observe them or even for them to escape. In addition, as they grow older they are less in the presence of their parents and, as a result, some of the high stress levels sometimes present in the very close and complicated relationship between a parent and a child may be reduced.

Dr. Turner was asked to comment generally upon the manner in which the workers' recordings were entered in the files of the Society. The practice seemed to have been that one portion of the recording related to several visits or incidents over a period of days, weeks or months. Dr. Turner described it as "summary recording." He said that in some cases that practice was appropriate and acceptable. He was worried that the practice was not acceptable in Kim's case and indeed was "bad practice." A portion of this response is transcribed as follows:

> "...this is bad practice, on the case where there are so many risks here, not to record I would think anyway on a daily basis, or on intervention by intervention, and I would support that, at least as a goal, that each time there is something happen on a case like this, that at least a note be be made of it of some kind or another. Because I sense through this that people were saying 'as far as I can recall, this is what happened.'"

Dr. Turner had some familiarity with the Parent Effectiveness Training Course generally, but was not specifically aware of the one presented ir the County of Lambton. He said it was a course to help "reasonably adequate[ly] functioning parents to be more effective adequately functioning parents." He did not believe it to be a therapeutic type of resource to be used in cases such as Kim's.

This led him back to repeat that the Society's files did not disclose any assessment of Jennifer Popen and Annals Popen. Any such assessment would be a factor in determining whether or not the Parent Effectiveness Training Course would be useful in Kim's case.

He was asked how effective the Parent Effectiveness Training Course might be if the instructor were not aware that the parents were involved in a case of child abuse. I think his reply was most damning of the Society for placing Jennifer Popen and Annals Popen in that Course. He said:

> "A. I think it's not only the question of being effective that would be worrying me as the point of it being almost counter-productive. I think that latter piece of information that I didn't have is troubling to me because we have tended...although I know some people who use P.E.T. and have seen it as being useful for younger children. It is tended to be seen more effective for adolescents and it is a communications model. It's a way of assisting people to communicate better but you are dealing with something much more than communications here and to put, I was going to say, throw, to put out a couple like this into a group of people who have ...were only in the usual disciplinary problems with which most parents have, I think is a great disadvantage to them. To the parents and to the group itself but that's another matter. Does that answer the question you're asking?
>
> Q. Yes. And when you refer to the latter piece of information, did you mean in fact that the instructor...
>
> A. Yes...wasn't aware. That's right. Because again, this is not just a programmed thing that anybody can use. I would consider that one would want to have at least some beginning knowledge of people that were in your group. It's not something that just...a canned program, if I can use that term."

That assessment of the value of the Parent Effectiveness Training Course in Kim's case points out how the Society's personnel, especially Mrs. Harvey and Mrs. Lo, deluded themselves and others. Attendance at the Course was mentioned at least in the recordings in the Society's files, in the pre-sentence report on Annals Popen prepared by Mr. Brouwer in March, 1976 and in Dr. Curtin's report in March, 1976. Each time it was mentioned as being a factor in a certain decision or opinion.

Mrs. Harvey's comment to the effect that the Course was all the Society could find is shown all the more to be pathetic and futile.

Dr. Turner acknowledged that he had difficulty in commenting upon the procedure followed by the Society to decide that Kim would be returned to her home before, rather than after, the birth of the younger child. The difficulty arose because he did not accept the validity or propriety of the earlier, more basic decision that Kim would be returned. However with that earlier decision having been made, he felt some effort was made by the Society to arrive at a professional judgement upon the second stage as to when the return would be effected. He said that there appeared to have been some effort to assess the situation.

Dr. Turner, questioning the earlier decision that Kim was to be returned, had no strong opinion as to whether the return should have been before or after the expected birth. Because of the evidence that Jennifer Popen had difficulty in coping even before the birth of her son in July, 1976, he would have preferred that Kim's return be delayed until after the household had adjusted to the new baby. He felt that could quite easily have been built into the plan for Kim's care, had there been one. He said a homemaker might have been helpful. In some ways he saw Mrs. Lo in that capacity, visiting regularly, even for short periods, on a structured or scheduled basis.

Dr. Turner spoke of a recent experimental project which indicated that the assignment of homemakers to some cases to supplement the services of professional workers could be beneficial in reducing stress within the homes.

Dr. Turner testified that it was "surprising to [him]" that the Sarnia Police Force, having received Dr. Jumean's telephone call at about three o'clock in the afternoon of June 16, 1975, had not advised the Society until after ten o'clock the following morning.

Dr. Turner testified that delays in proceedings in court are of concern to social workers. In most instances it is of advantage to have any question of wardship resolved quickly so that plans for the family and child can be prepared and implemented.

With specific reference to Kim's case he agreed that the delay in resolution of the Society's application for wardship of Kim was "a very lengthy delay". The application was made initially on September 8, 1975. It was finally heard and determined on February 25, 1976, five and one half months later.

Dr. Turner said that the full and proper role of the Society's personnel in Kim's case should have been multi-faceted. Mr. Carter's role was not merely to investigate and assemble evidence for presentation upon the application. An adequate fulfillment of his role would include assumption of responsibility for determining what could be done to assist the Popen family as a unit as well as to protect Kim. It would include an exploration of the past to gain an understanding of what happened and to learn of any other problems which might have existed.

In Kim's case there had to be some thought given to means to assist Jennifer Popen and Annals Popen to be better parents. As well consideration had to be given to the welfare of the unborn, but expected child of the marriage.

Dr. Turner felt that if Kim's parents refused to talk with Mr. Carter about Kim, Mr. Carter could simply have moved to satisfy the Court, on the basis of medical evidence alone, that Kim was a child in need of protection. I infer he meant that Mr. Carter and the Society should have made such a motion.

Dr. Turner did not accept that such an approach was necessarily desirable. He seemed to favour an approach whereby the social worker would employ special skills to gain the co-operation and confidence of parents who, initially, had been hostile and unco-operative.

Dr. Turner said that throughout Kim's case Mrs. Harvey should have been constantly weighing the various factors in the case to determine the correct goal to be set and the best way to achieve it.

He contrasted that sort of approach with the simple selection of a goal to return the child regardless of the opinions of others and the validity of those opinions.

Dr. Turner felt that Mrs. Lo would have been helped in her duties if standards for the handling of child abuse cases had been available to her. When a question was put to him which seemed to suggest that the publication by the Ontario Association of Children's Aid Societies in July, 1976 entitled "Guidelines for Practice and Procedure in Handling Cases of Child Abuse" was the first published set of such standards, he replied:

> "I don't quite know what to contain in the word standards. Certainly the professional literature is quite rich on various indices that one may use, various types of indicators that are helpful. I am not sufficiently familiar with what the ministry has prepared nor what dates it has for it but there certainly are excellent resources around that I would certainly expect a person in a supervisory capacity to know about and, indeed, a practitioner should at least be aware of the relevant literature surely."

Dr. Turner acknowledged that he, like others, was concerned by the differences in the standards of service provided by various children's aid societies across Ontario.

He said that the uncertainty as to the minimum standards of service was of greater concern. He would expect to look to "the Ministry," by which I presume he meant the Ministry of Community and Social Services, for such standards. It was of concern to him that, while the Hanson Report of 1974 urged the setting of standards by the Ministry, none were set until 1977.

Dr. Turner was asked about the actions taken with reference to the infant Karie, after Kim's death. He expressed his professional opinion that a social worker would have had

> "more than enough professional evidence to indicate that this was a continuing high risk..."

He said that he would prefer

> "to err on the side of protecting the child and have to be told by the court that you can't do it than the other way around."

Dr. Turner did acknowledge that sometimes veteran social workers, who had been chastised by a court for unnecessary apprehension of a child, may be hesitant to apprehend a child in some circumstances.

He said that at one time children's aid societies had a reputation as "baby snatchers." He seemed to relate that period of time to the period when the societies' budgets were based upon the number of children in their care and the number of days the children were in their care. He said that at that time a society which had a good preventative programme and took few children into care suffered in that its budget was smaller as a result.

I interpret some of Dr. Tuner's testimony to be that there is a variable ebb and flow in the relationship of parental rights and the perceived need for apprehension of children so as to protect them. He felt that for a period of time following a case such as Kim's

> "the children's aid could do no wrong in removing a child,"

but, in time, there is a reversal and

> "there will be tremendous criticism about trampling on the rights of parents because the child was removed unnecessarily or apparently unnecessarily."

He said that all of that would certainly pass through the mind of a social worker confronted with an emergency situation such as Mrs. Dick found at the hospital on August 31, 1975.

Dr. Turner felt that each children's aid society should have a process whereby each worker would be evaluated on a regular basis. He had some doubt as to the method whereby the local director of a children's aid society might be evaluated. However he supported the concept of "peer evaluation" which would come about if there were a system of accreditation of children's aid societies conducted by qualified, professional persons.

In view of the organization of the societies in Ontario he indicated that "a non-official accrediting system" might not be sufficient. I infer he felt that any system of accreditation of children's aid societies would have to be under the aegis of the Ministry of Community and Social Services.

He suggested that inherent in any such review and accreditation would be procedures for the removal of any person who was not satisfactorily performing the duties of his or her position in the children's aid society.

Dr. Turner acknowledged that the relationship between the local director and the board of directors of a children's aid society could place the board of directors in a postiion of dependence upon the local director for guidance. He hoped that the board of directors would be aggressive enough to overcome any such dependence.

He said that, while The Ministry of Community and Social Services had a statutory duty to advise, supervise and inspect the children's aid societies, the boards of directors of those societies also bore some responsibility. He said that in the past some members of the boards of directors of some children's aid societies had not recognized or fulfilled their responsibilities.

I asked Dr. Turner for his opinion as to the type of qualifications which should have been possessed by the various persons who became involved in Kim's case, particularly from June 17, 1975 forward.

He regarded the qualifications for the various classes of social workers set forth in The Child Welfare Act as being "the very minimum that people would have."

He said that an important question was the ongoing responsibility of each social worker to keep his or her qualifications current. He mentioned Mr. Khattab, the hospital social worker, as an example of one who had not done so. Mr. Khattab was not aware of the battered child syndrome. That failure to remain current was a matter of as much concern as failure to obtain qualifications in the first instance.

In the same vein he spoke of Mrs. Harvey. He said that she could be regarded as having full qualifications and apparently she was the best qualified of all social workers engaged upon the case. He said he would want to know if Mrs. Harvey had kept herself and her qualifications current. He would want to know if she was aware of the knowledge and research now available for application in given cases.

He spoke of a need for the setting of basic minimum standards of qualifications coupled with a requirements that the workers attain and retain qualifications currently acceptable.

He placed some responsibility upon educational institutions to recognize changes in practice and to incorporate them into their curricula.

He said too that society generally must recognize that people do abuse and kill children. It does happen, but many will not believe it. He said that social workers must recognize that terrible things are done to children and they must be prepared to accept the possibility that any report or suggestion of child abuse could be true. He spoke of having heard Dr. Bates in another setting. He accepted Dr. Bates' thesis that not only must social workers have a good knowledge of human behaviour and how it functions in a normal sense, but they must recognize that it may be distorted.

He suggested that in educational and training programmes for social workers too little attention was given to psychopathology. He said educational programmes have been intended to help people to be healthy and to achieve, but perhaps have "underplayed" the other side, the perverse or cruel side of human nature.

He said that in cases such as Kim's a little naivete can be very dangerous.

Dr. Turner said there were some excellent training programmes available to serving social workers to assist them to remain current. These were available through The Ministry of Community and Social Services. He said there was an abundance of literature. Some related to very complex research projects. Some was in the form of very readable tests. Films were available.

That discussion led him to return to his statement of "the necessity to work together, the team thing." He said some, by dealing with cases of abuse every day, became very skilled and confident, but others did not often become involved in such cases and so had to be alert to all that happened. He felt there was a professional responsibility to share acquired knowledge.

He said that while the resources were "really very rich" he was not sure of the extent to which they were used.

Dr. Turner acknowledged that in the years since 1975 and 1976 there had been a lot of "catching-up done."

He placed some responsibility upon the individual social workers to keep themselves current. He suggested that could be done by attendance at seminars and conferences. He said:

> "...the annual conference of Children's Aids in Ontario is one of the better conferences that takes place for keeping up on things. One could hardly have been in a position of responsibility in a children's aid society and not know since the mid 60's that child abuse was being talked about. It has been available, yes, but I think this responsibility is hard to accept if you have been 20 years in the field that you need to upgrade yourself. I think that is a difficult thing - people say I have been in this business so long there's not much more I can learn. I am afraid that isn't true for any of us."

I cannot help but compare those sentences with Mrs. Harvey's statement to Mrs. Farina in 1975 that no one from the Society would attend a seminar sponsored by the Ontario Association of Children's Aid Societies, the same body as that mentioned by Dr. Turner, because

> "really the Association had nothing to offer that would be of help to this Society."

Dr. Turner did not say it, but surely Mrs. Harvey in that remark to Mrs. Farina clearly demonstrated the exitence of the very attitude that Dr. Turner described.

In saying that Dr. Turner did not relieve The Ministry of Community and Social Services of its obligations to keep the children's aid societies abreast of developments in child care, but he did feel that some pressure should come from the societies themselves. He felt the societies have to keep abreast of developments.

Almost the last sentence of his testimony was, in part:

> "even if we could damn the Ministry for having done nothing, I still would hold that anyone who had set themselves up as the local director in an area to carry out the care and protection of children had the responsibility to be on top of the field."

That is a strong criticism of Mr. Lovatt.

But others of the personnel of the Society share the burden of Dr. Turner's comment that financial restraints upon the Society should not have prevented them from keeping themselves and their personal libraries current. A very few dollars would enable the purchase of two major text books upon child abuse.

Dr. Turner was not unduly concerned about Jennifer Popen's actions at the hospital on August 31, 1975 when she expressed a desire to remove Kim. He would not have regarded that as an indication that she had abused Kim, but it did fit one theory that a mother sometimes sees a child as an object which she wishes to have near to her even though she is abusing the child.

He did say he would be worried by Jennifer Popen's actions had the physician said Kim was too ill to go home.

In either case the children's aid society in such a situation should have fully considered and assessed the mother's actions in the light of all of the circumstances.

In summary, as he concluded his testimony, Dr. Turner said that from the outset he would have regarded Kim's case as being a case of serious proportions. While it might be arguable as to exactly when that assessment should have been made by the Society's personnel he was certain it should have been made during the early weeks of the case.

He had some difficulty in satisfying himself that Mrs. Lo recognized it as a serious case. He said that Mrs. Saul on June 17, 1975

> "at least had some perception that something was required here over and above one visit."

However he did not know to what degree any of the Society's personnel regarded it as being a serious case which might end with Kim's death in a few months.

Dr. Turner's own assessment of all of the factors known early to the Society:

> "...was such that you would have put your money in favour, if not death, then continuing serious assault. The death may have been quasi accidental in what actually killed the child."

I move now to a review of Dr. Bates' testimony.

In addition to his general knowledge and expertise in the field of child abuse, Dr. Bates had had some direct involvement in Kim's case. He had testified at the preliminary hearing and the subsequent trial of Jennifer Popen and Annals Popen upon the charge of manslaughter. To prepare for those proceedings and for this Inquiry Dr. Bates had reviewed the report prepared by Dr. Patodia after the post-mortem examination of Kim's body. Prior to testifying upon the Inquiry Dr. Bates had read the various consultation forms, admission and discharge forms and reports written by Doctors Singh, Thorp, Jumean, McCrudden and Bennett produced as exhibits upon the Inquiry.

Dr. Bates reviewed the contents of the post-mortem examination dealing firstly with those set forth under the heading "External marks of violence." He testified that some of the injuries described therein were such as to lead him to form the opinion that Kim had been physically and sexually abused. Some of the injuries might have been suffered in the normal activity of a child of Kim's age.

He testified that the multiplicity of bruises on Kim's body was "very striking." Many of them, if viewed singly in isolation from all of the other injuries, might be said to have arisen from normal activity. In that regard he mentioned the contusions over the forehead near the hairline, over the ear and on the chest, elbows, forearms and cheeks. He then said:

> "...but it's most rare that one finds in any child such extensive bruising extending from the head right down over the rest of the body."

Dr. Bates expressed some concern about the discoloration of the nail bed of the left thumb. It could have arisen in normal activity, but it is "not very common"; so Dr. Bates was unsure of its significance.

He felt the contusions over the buttocks were unusual. While children may fall heavily on their buttocks in play, they do not usually bruise in that area because of the presence of fat and muscle.

In Dr. Bates' opinion, bruises to the genital area, particularly such as the mark over the mons pubis and the contusions by the vulva and vulva opening noted by Dr. Patodia, rarely arise from normal activity. He said that bruises in that area must raise more concern than would arise from a bruise on the forehead.

He said that bruising on the thigh, especially the inner thigh, should raise some suspicion, but not as much as that in the genital area.

Dr. Bates described the wide dilation of the anal opening as being of

> "marked concern...and, if that is seen, child abuse must immediately be suspected without any doubt."

He concluded that response by saying:

> "...From looking at the recordings here, the position of marks of violence...I would therefore say that the genital bruising and the anal opening being widely dilated are the ones of most concern and should trigger any person off to suspect child abuse immediately."

He expanded that in his next answer when he said:

> "If I saw all the bruising here, aside from the bruising in the genital region and the anal area, I would have concern for the child and request from my team members that further assessment of the family be undertaken."

Dr. Bates was asked to comment upon the presence and nature of the genital and anal injuries. He stated that it is difficult to obtain accurate statistics in the whole area of child abuse, but his comments were based on impressions formed on his own experience and on discussions with other investigators in the field.

He said that, while insufficient research had been done in the area of sexual abuse of children, reports of rather extensive studies had been published. In most sexual assaults there is no physical injury, such as bruising, to detect from a medical point of view.

Thus what happened to Kim did not fit the norm of sexual assault of children.

He said that in the available literature it is generally accepted that a majority, perhaps about seventy-five percent of incestuous relationships and sexual assaults are between fathers and daughters or by fathers upon daughters. The literature does not contain much reference to sexual assaults of children by mothers. It is known that mothers may play very passive roles in sexual assaults by their husbands on children and may play active roles by inflicting the assault themselves.

Dr. Bates said that in cases of child abuse it is extremely difficult to be "absolutely sure... who is the perpetrator." He felt that would be so even if one parent confessed. If one did confess Dr. Bates would nonetheless wish to

> "look at both of the parents in depth anyway, but look at the reasons around giving that confession."

He continued his testimony to say that in the majority of families where child abuse occurs one parent inflects the abuse and the other is passive in the act in that he or she suspects or knows or agrees to what is happening and does not protect the child. He said:

> "It is most rare to find a situation where one of the partners in the marriage is not aware at all that the child has been abused or to find both of them actively participating in the abuse of the child...All I can say is that there is quite extensive bruising around this child's genitalia and, if a mother didn't notice that, she was negligent in her mothering abilities."

Whether or not Jennifer Popen inflicted those injuries she ought to have noticed them.

Dr. Bates summarized his testimony with reference to the external marks of violence to Kim as described in the post-mortem report by agreeing that the injuries were consistent with injuries inflicted in cases of child abuse.

He then moved on to review other portions of the post mortem report which set forth Dr. Patodia's findings upon the internal examination of Kim's body and X-ray, microscopic and laboratory tests and examinations.

There were subdural and sub-arachnoid haemorrhages extending over the surface of the brain from the anterior to the posterior aspects and over the base of the brain. In Dr. Bates' opinion and experience such injuries were

> "certainly consistent with child abuse...in a child where we find this type of injury, we must also make child abuse a high priority in our assessment."

The extensive bleeding in the scalp which, not surprisingly, was not visible externally, was consistent with extensive trauma to the head.

The presence of fibrosis in the area of the anus shows that injury to be an "old" one which was repairing. He did not attempt to assess the age of the injury. He said such an injury would be hard to produce and would require the application of considerable force. It would require the insertion of a large object into the anus on repeated occasions over a period of time. That would be very painful. In his opinion such an injury was "certainly indicative of wilfully inflicted force."

The congestion and oedema in the area of the hymen was not normal. It would appear there had been trauma to the hymen.

The haemorrhage over the capsule of the spleen was "undoubtedly" related to some form of trauma, perhaps a blow to the abdomen or rib cage.

The haemorrhage in the area of the left adrenal and left kidney may be consistent with abdominal trauma.

Having reviewed that post-mortem report, Dr. Bates formed the opinion that Kim had been badly abused and beaten.

Dr. Bates testified that the injuries revealed by the post-mortem report were not consistent with the explanation for at least some of them given by Jennifer Popen when she testified upon the Inquiry. In describing that explanation to Dr. Bates, counsel said simply that Jennifer Popen's testimony was that about a week prior to Kim's death Jennifer Popen had struck Kim's head, that Kim thereafter was irritable and more withdrawn and did not want to play, and that, on the day of her death, Kim fell from the porch and did not awaken.

Dr. Bates said that his opinion was based on the multiplicity of Kim's injuries and their nature. They were not minor injuries. There were very serious blows and genital molestation. He suspected there had been more than one blow to the skull.

Counsel asked Dr. Bates to express his opinion as to the professional duties or responsibilities of the various medical doctors who were involved in Kim's admission to, treatment in and release from hospital in March and April, 1975 as a result of suffering a broken arm. The question was addressed to the area of responsibility for reporting Kim's injury to any authority.

Dr. Bates replied that every physician has a responsibility to provide the best medical care possible for his or her patients. He has found that situations of abuse and neglect of children have been approached in various ways.

His own view was that such a situation was an emergency and had to be dealt with in an organized way. The physician who first sees the child patient has a duty to ensure that the child is adequately protected. The physician has a further responsibility to ensure that the parent receives whatever help is necessary.

He felt that it was important that any physician, admitting a child to hospital and suspecting that the child had been abused, should record in the hospital chart any such suspicion and the basis therefor. He said it was important that "the clinician's provisional diagnosis of child abuse [be] written in the chart" and that the hospital have "some form of protocol to follow" when there is such a suspicion.

He did not see in Dr. Thorp's writing on any of the forms prepared in March and April, 1975 any suggestion of concern that Kim had been physically abused. Another doctor, looking at those forms at a later date, could be led to believe that Kim had been injured by accident.

Dr. Thorp in his testimony had said that he had found the situation "extremely suspicious" when he admitted Kim to hospital on March 22, 1975. That suspicion arose from the nature of Kim's injuries and Jennifer Popen's explanations as to how they had occurred. He said he had suspected then that Kim had been abused.

In the practice of medicine, general practitioners or family physicians frequently call upon consultants for advice and assistance in dealing with problems. The physician is not obliged to accept and act upon the consultant's advice.

The role of the consultant varies. The physician may merely seek a consultation without any continuing involvement of the consultant. Or the physician may seek a consultation and request the consultant to participate in the care of the patient. Or the physician may ask the consultant to see the child merely as a matter of interest.

Dr. Bates' opinion is that the consultant, like the physician, has a responsibility to ensure that the patient receives the best possible care. He said the responsibility is imposed by The Health Disciplines Act and the code of ethics of the medical profession.

As to Kim's situation in March and April, 1975, his view was that it required in-depth investigation. He said that children of her age at that time do not suffer fractures by rolling on their arms or catching arms in cribs. He felt that, if an infant of a couple of months of age, or even several months of age, suffers a fracture, the medical practitioner must suspect that the child had been abused. Only "a good story" should remove the suspicion. I infer that by "a good story" he meant an explanation for the injuries which was reasonable in the view of the physician and consistent with the nature and severity of the injury.

Dr. Bates said that The Child Welfare Act imposed on all medical practitioners involved in a situation such as Kim's was in March and April, 1975, an obligation to report the matter to a children's aid society or Crown attorney.

In Dr. Bates' opinion Kim

> "was showing the effects of physical abuse at that point [March 22, 1975]."

He expressed "concerns about what happened regarding that referral to the consultant and the subsequent management."

Dr. Bates was asked whether the consultant should be concerned about the consequences which might flow from the consultant's reporting the situation to a children's aid society or Crown attorney "over the head" of the physician who had requested the consultant's services. One such concern expressed upon the Inquiry had been that the physician might not refer other cases to the consultant. Dr. Singh, in his earlier testimony, had defended his failure to report the matter as required by The Child Welfare Act. One of the bases of that defence was expressed in the following exchange of questions by counsel and responses by Dr. Singh:

> "Q. So you were well aware of the procedure if you had an abused child to call someone up at the children's aid?
>
> A. Right. If it's child abuse and if it happens to be my patient, I should emphasize that, I would definitely report the child abuse to the children's aid or Crown attorney or police.

Q. You and I seem to be running into some difficulty, Doctor, as to whose patient it is?

A. That's correct.

Q. I suppose if you're the little infant you don't really care who your doctor is as long as it gets to children's aid.

A. You have to be a physician to understand. If I start reporting I will not get a single consultation from the concerned physician and probably I have to leave the town.

Q. If you what?

A. If suppose any physician requests a consultation my duty is to inform the concerned physician about my impressions. I can't overrule his judgement and go and inform the children's aid or somebody else, without informing the physician first.

Q. And would that affect your practice if you started to do that?

A. That's correct."

Dr. Bates' response to that was that if the consultant had any such concern it had to be faced. He felt the consultant having such a concern had to speak to the referring physician about it in an effort to acquaint the physician with the seriousness of the matter and the consultant's concern. He felt that the consultant was obliged and required to make a report to a children's aid society or Crown attorney. Dr. Bates himself had made such reports to a children's aid society after having been consulted by other medical doctors with reference to their patients.

From Dr. Bates' response to that question I infer he did not agree with the position taken by Dr. Singh in other areas of his testimony dealing with his failure to report to a children's aid society or Crown attorney in March, 1975. Dr. Singh had stressed that his only duty was to the referring physician. Dr. Singh limited his duty to one of examining the patient and then reporting upon that examination only to the referring physician. Dr. Singh said authority for that was to be found in "The Medical Act or OHIP Act" which required him to give his written report to the physician

> "[whose] duty [it was] to inform the children's aid society. That's because this is his patient; it's not my patient."

Dr. Bates' opinion was that a consultant, such as Dr. Singh was in March, 1975 in respect of Kim, was responsible to ensure that the matter was reported to a children's aid society or Crown attorney. He might have asked the referring physician, such as Dr. Thorp, to make the report. The important thing, in Dr. Bates' opinion, was that a children's aid society be informed. I infer from his response he felt the obligation to report lay upon both the referring physician and the consultant. They may agree that one or the other will make the report, but if the report is not made both bear the consequences.

Dr. Bates agreed with the suggestion that, in Kim's case, it seemed that each person involved in March and April, 1975 assumed that someone else should or would make the necessary report to a children's aid society or Crown attorney pursuant to section 41 of The Child Welfare Act, but, in the end result, no one made such a report.

In my view Dr. Bates' opinion as to the obligation of a consultant to report any case of child abuse or suspected child abuse is correct. I believe that Dr. Singh was in error in his understanding of the situation.

There was testimony that in November, 1976 Dr. Singh had provided leadership in the formation of a child abuse committee composed of representatives from various organizations and professions in the City of Sarnia and the County of Lambton. Dr. Singh has participated in the direction and operation of the committee. His testimony indicates that his current practice in cases of suspicion of child abuse closely resembles that which Dr. Bates suggested was appropriate for consultants. Dr. Singh did testify that he adopted that practice only after he:

> "requested the Board of the Hospital to give me the privilege and authority to bypass the general practitioner, to report this case to the children's aid or Crown attorney or to the Child Abuse Committee."

He believed he needed that permission because

> "It's his [the general practitioner's] patient, it's his privilege and he can do whatever he wants."

My understanding of the testimony relevant to that Child Abuse Committee is that, while it was composed of representatives of other community agencies, it was centered on St. Joseph's Hospital in the City of Sarnia and its procedures primarily involved personnel of that hospital. I presume Dr. Singh's reference to "the Board of the Hospital" was to the Board of that hospital. He did not say what his practice was if the matter was referred to him in a capacity other than as a member of the staff of that hospital. Presumably he would do as he did in March, 1975. If so he would be in error.

Dr. Bates agreed that Dr. Singh's report dated March 27, 1975 had dealt with many of the factors Dr. Bates mentioned in his testimony upon the Inquiry. Dr. Singh had noticed the unusual injury. He had wanted a social history. He even had warned of the ultimate injury.

Counsel sought Dr. Bates' opinion as to the procedure that would have been appropriate when Kim was released from hospital on April 3, 1975. Dr. Bates suggested that a child abuse team in the hospital might have by then made certain that the appropriate report to a children's aid society had been made. He said that at The Sick Children's Hospital in Toronto it is the practice that, if a physician suspects that a child has been abused, the matter is referred to Dr. Bates, as director of the hospital's child abuse programme, or to another paediatrician assisting Dr. Bates in that programme. The matter is discussed with others such as the hospital social worker and a public health nurse. It is then decided who will make the report to a children's aid society. It was significant to me that Dr. Bates said "who" will make the report; there was no question but that a report would be made and made at once by one of those involved or mentioned by Dr. Bates.

Dr. Bates said it was important that all members of the child abuse team know who has assumed responsibility for making the necessary report in the particular case. In the practice at The Sick Children's Hospital the child would be held in hospital until the children's aid society concerned in the case had approved of the child's release or, perhaps, even until a hearing has been held in provincial court (family division).

Counsel inquired of Dr. Bates as to whether it would be appropriate for a family physician to report any suspicion of child abuse to a child abuse team at a hospital which would then assume responsibility for any further action. Counsel suggested that such a procedure was proposed in the City of Sarnia.

From Dr. Bates' earlier testimony, I had felt that that procedure was, at least, similar to that which Dr. Bates said was in effect in Toronto. In response to the specific question Dr. Bates said that procedure was:

> "a good idea because some physicians may not be able to call the children's aid because they want to continue with the family in a certain relationship, thereby they can refer to another team and they can do that. I think that's a very good way to look at it."

Dr. Bates' opinion was that the child in such case is the patient of the consultant and of the physician. He said the parents too become patients in the treatment programme devised for the case. While counsel did not state it, I felt that the question was put as a result of some of Dr. Jumean's responses which indicated he had had some difficulty in differentiating the child and the parents as separate patients to whom he owed separate and distinct and, perhaps, conflicting obligations.

At a later point counsel did face the question squarely and ask Dr. Bates if a physician might be reluctant to report any suspicion of child abuse because the physician regards both the parents and the child as patients. Dr. Bates acknowledged that reluctance as being a "reality," but he felt it could be overcome by the physician's discussing the matter and suspicion openly with the parents. He felt that if the physician indicates a desire to help the family the parents will understand. They may even be relieved that they are to be helped. Dr. Bates felt physicians must face the problem to ensure safety for the children involved.

Dr. Bates said that the observation that Kim was dehydrated when admitted to St. Joseph's Hospital by Dr. Jumean on April 28, 1975 would not overly disturb him. However, in view of the child's past history, that observation or finding would alert him and cause him to look into the situation in more detail.

Counsel advised Dr. Bates of Dr. Jumean's testimony to the effect that he had not, on April 28, 1975 or during Kim's hospitalization at that time, read Dr. Singh's consultation report dated March 27, 1975. Counsel asked Dr. Bates his opinion as to whether Dr. Jumean should have reviewed his file on Kim as a part of his procedure on admitting her to hospital or treating her.

Dr. Bates replied that medical practitioners must be thorough. He expected that, even if Dr. Jumean were unaware of the copy of Dr. Singh's report which was received in his office, a copy of Dr. Singh's report would have been in the hospital file on Kim and available to Dr. Jumean.

Dr. Bates was told of the incident wherein Mrs. Hewitt had seen Kim with Jennifer Popen in the shopping mall and noticed Kim had black eyes and had reported that to Dr. Thorp who advised Dr. Jumean. Dr. Bates was asked his opinion as to what Dr. Jumean, the family physician, might then have done. He replied:

> "I would expect that that would create concern within him for the child's welfare and that he might call the child into his

> office to examine the child or contact the public health nurse or someone to further look into the matter."

Dr. Bates was told of Dr. Jumean's telephone call to the Sarnia Police Force at about three o'clock in the afternoon of June 16, 1975 wherein he reported an allegation of abuse to Kim. He was told that the police did nothing until nine o'clock the next morning. He was asked if he would be concerned by that delay of about eighteen hours by the police. Dr. Bates' reply was:

> "Yes, that would be of concern to me. I would be quite surprised that that happened. Of course, I'm not sure what the doctor said on the phone regarding the urgency of the situation."

Dr. Bates was not surprised or disturbed to learn that Dr. Jumean had not made any inquiry of the Society after his telephone call to the Sarnia Police Force on June 16, 1975 and his office visit with Jennifer Popen and Kim on June 19, 1975. He felt that Dr. Jumean might properly assume that if the police and the Society had visited the home they had decided upon an appropriate course of action.

Dr. Bates was asked, having regard to all of the events in Kim's life, including the proceedings in the Provincial Court (Family Division) of the County of Lambton, what he perceived as prerequisites to any decision to return Kim to her parents.

Dr. Bates began his reply by saying that whoever is to conduct the investigation into any situation such as Kim's and her parents must be convinced that the child has been abused. If not that person's assessment of the situation might be "jeopardized."

As an aside to that, I would express my belief that employees of the Society were satisfied that Kim had been abused, but they had not really determined and articulated the identity of the person or persons who abused her.

As a further aside I would comment that the validity of Dr. Bates' statement was demonstrated by

Mr. Khattab. Mr. Khattab did not believe that anyone could abuse a two-month old infant. His assessment of the situation was worthless. Presumably his belief affected his assessment.

Dr. Bates went on with the introduction of his reply to say that whoever investigates an incident of alleged child abuse must have had prior experience with cases of child abuse. He said that is so

> "because there are many subtleties in child abuse that can be easily missed by someone who is not conversant in a problem."

As an aside, I note that the accuracy of that statement is borne out by the testimony as to Mrs. Lo's participation in Kim's case and the assessment of the quality of that participation. Clearly Mrs. Lo was inadequate because of her lack of knowledge and experience in child welfare and, particularly, child abuse.

Dr. Bates said that any investigation must proceed in an organized and orderly way.

In Kim's case an important factor was consideration of the incidents of fractures. That undoubtedly was an indication that she had been abused and required protection.

He said that it was essential and crucial that those developing a plan for the management of a case of child abuse have an "in depth assessment" of the parents and the family, including the child. He said that such assessment should not be "crisis oriented," but must look at the "core" of whoever may be suspected of abusing the child. Such an assessment would

> "look at their childhood,...their functioning in their marriage, their functioning in the community, their feelings of themselves and how they view the child."

In that last regard, Dr. Bates would want to know

> "What is the child? Is the child an object? Is the child something to fulfill

> their needs? Is the child wanted? etcetera."

Some of the expressions used by Dr. Bates are surprisingly similar to those used by Dr. Turner to describe the psycho-social information he felt had to be assembled.

In Kim's case she had been very seriously abused. In such a case the best investigators, the police, should be involved to assist the doctors and social workers. Dr. Bates was glad that the Sarnia Police Force conducted an investigation.

He said that the involvement of police officers should not be solely for the purpose of prosecution of and conviction upon some criminal or quasi-criminal charge. It should be for the purpose of obtaining all available information so that a plan to improve the situation can be developed and implemented.

Dr. Bates testified that if, as the investigation proceeded, there is any indication that there is any "rather serious personality disorder or other abnormality within the family", a psychiatrist should be retained and involved.

In Kim's case Dr. Bates had understood there were

> "some concerns about the involvement of the parents with this child on an emotional basis. There are concerns about [the] mother's childhood [and] about the marriage."

His opinion was that there were

> "...innumerable things in this family history that would suggest that there should have been a psychiatric assessment of the parents prior to ultimate disposition of the child to the child welfare court."

Dr. Bates acknowledged the difficulty involved in obtaining the services of psychiatrists. He felt there were insufficient numbers of psychiatrists with the particular expertise required in such cases.

The validity of that acknowledgement was supported by the testimony as to the small number of psychiatrists in the City of Sarnia and the County of Lambton.

Counsel mentioned Jennifer Popen's testimony as to events in her childhood including abuse, sexual abuse and her marriage at, she said, the age of thirteen.

Dr. Bates said that those matters would be "crucial" in investigation of the family and the subsequent case planning. He said that he would have grave concerns about the ability of a worker to assess the situation if information of that nature had not been obtained.

He said that what occurred in a person's childhood

> "is undoubtedly the most critical factor that will determine eventually how that person is going to function as a parent."

That is, an expression of opinion similar to that of Dr. Turner.

He went on to say that that was why he believed specialists should look at

> "these families to determine what happened before and...whether or not we can help them at all. But no we don't do that. We go on jeopardizing kids to prove that they are in need of protection and that's what happens."

I inferred that Dr. Bates had seen too many cases such as Kim's where the only question was "Is the child in need of protection?" and where the answer to that question was formulated upon inadequate information.

In Kim's case it would seem that the Society did not have enough information to decide the elemental question "Can Kim's parents be helped?"

In Dr. Bates' opinion the child in any such situation should be assessed to determine at what level of development the child is. There was no testimony upon the Inquiry to indicate that any such assessment of Kim had been made.

Dr. Bates said that all of this was essential to enable preparation of an adequate plan for the management of a case. That plan should be presented in the provincial court (family division) and, if the child is made a ward of the children's aid society for a fixed period of time, a plan should then be developed for the child's return and reintroduction to the home.

Any such plan should contain a "contract" with the parents outlining what is expected of them. What the parents can be expected to do to demonstrate their ability to "parent" the child would depend directly upon the prior investigation of the parents. The plan would have to be "tailored" to the parents. In that regard, while Dr. Bates felt that while

> "parent effectiveness programmes are great things...[but] for a lot of child abusive parents [they] wouldn't help one bit."

Dr. Bates testified that re-introduction of a child into the home should be gradual. It should be achieved by visits in the company of someone with experience in child care and ability to observe what happens. I presume he meant the person should also be able to assess and evaluate the significance of whatever did happen or whatever was observed. He said

> "...So few of our social workers have had child care training or experience yet we are entrusting our most precious commodity, our children, to a person who may not have the experience necessary to determine what is going on."

That Kim was entrusted to Mrs. Lo is an example of the basis for the concern expressed in that statement.

Dr. Bates said that the "contract" with the parents for the return of the child to the home would provide that certain things, which he called "milestones," must be achieved by the parents before any decision might be made to return the child to the home. Such milestones might relate to the parents' marital, financial and personal problems, their counselling, their attendance at community groups, their use of community resources and their relationships with relatives.

Dr. Bates' position was that no decision to return a child to the home should be made unless and until the "contract" had been performed by the parents and sufficient improvement in the situation had been noted.

Dr. Bates' opinion was that the Ministry of Community and Social Services, from 1973 to 1977, "were not placing child abuse in a high priority despite the urgings of some persons that child abuse had to be treated "from a high priority standpoint".

When asked if that Ministry were being warned that child abuse was a major problem Dr. Bates replied:

> "Well I know a number of persons in this province who have been concerned about this for a considerable period of time and in those years that you mentioned, concerned about the inactivity of the Ministry in becoming more actively involved. Now in 1977 and in this year [1978], they have really accomplished a great deal, but, prior to that, there were problems."

Counsel then asked:

> "But if they were being warned, Doctor, back in 1973, '74, '75, in your opinion is there any justification for the Ministry not doing anything?"

Dr. Bates's reply was simple, direct and condemnatory. The reply was the one word

> "No."

Dr. Bates testified that child abuse occurred "right across the Province of Ontario." While children in all parts of the Province should receive the same degree of protection he recognized that that was not so in practice. The children's aid societies in some areas might be more progressive than others. Some areas might have greater resources on which to draw to provide service to children.

Counsel asked Dr. Bates if, assuming that the Ministry of Community and Social Services had a mandatory duty to advise and supervise children's aid societies in the field of child abuse, he felt that that Ministry "carried out that function between the years 1973 and 1976 advising local children's aid societies how to deal with child abuse."

Dr. Bates replied:

> "Being an outsider from the point of view that I'm not within the children's aid or within the Ministry, I can only comment on that basis, but I do feel that they did not provide the guidance necessary."

Dr. Bates testified that even in 1973 "there was a considerable amount of literature" on the subject of child abuse. In 1974 and 1975 information as to how child abuse was handled in Ontario was "available if the Ministry had looked for it." The Sick Children's Hospital in Toronto had a programme in place from the mid 1960's to notify children's aid societies of cases of child abuse.

Counsel advised Dr. Bates of the memorandum dated July 25, 1975 from the Director appointed under The Child Welfare Act to children's aid societies in Ontario. In that memorandum the Director wrote of the formation of a child abuse committee within the Ministry. Initially that committee was to begin a process of self-education regarding child abuse. That would involve learning of activities outside of Ontario. The committee was said to be "developing a plan of action that will enable it to arrive at recommendations for inter-ministry approach to child abuse." Counsel mentioned Dr. Greenland's report to that Ministry in 1973.

Dr. Bates said he did not know what the Ministry had done with Dr. Greenland's report. I might add that I recall no testimony upon the Inquiry that would have enlightened Dr. Bates on that.

Dr. Bates did say that "without a doubt" the Ministry should have been into the field of self-education about child abuse before 1975.

During a considerable period while he testified, Dr. Bates spoke in very general terms upon child abuse. He sought to define it and to demonstrate it as a problem. He displayed photographs of some children to illustrate portions of his testimony. Those photographs have been placed among the exhibits produced upon the Inquiry. They are placed in the sequence in which they were shown so as to enable any who care to do so to relate a photograph to a specific portion of testimony.

During this period of his testimony, Dr. Bates mentioned certain incidents in or about Kim's case to demonstrate the application of his testimony.

For relatively long periods of time Dr. Bates was not interrupted by any question from counsel. His testimony was presented as an instructional lecture by a learned professor. It was most helpful to me in its general terms and in its specific application to Kim's case.

He said that a physician, a public health nurse or a children's aid society worker may come upon a case of child abuse, but yet remain in a dilemma as to what child abuse is. Thus, it is important that all who deal with the health or social aspects of children have the benefit of educational programmes. They must be immediately aware of certain types of abuse and neglect.

Kim suffered a broken arm when only about six or eight weeks of age. That should have immediately brought to the minds of those then concerned with her care the possibility that she had been physically abused. When that possibility arose, the whole family situation should have been examined. If the possibility could not be displaced, a programme for management of the abuse and neglect should have been implemented.

I note that Dr. Singh, Dr. Lota and Dr. Thorp did recognize the possibility that Kim had been abused. Dr. Singh and Dr. Lota wrote of it. Dr. Thorp did not. But none of them did anything more effective then make that recognition. Dr. Singh did recommend some investigation by Mr. Khattab, but he did not ensure that his recommendations was acted upon. In the end his recommendation was not effectively fulfilled by Mr. Khattab.

That portion of Dr. Bates' testimony is a negatively critical comment upon the actions of all concerned with Kim's care upon, during and immediately after her hospitalization on March 22, 1975. The criticism is not that Kim did not receive appropriate medical attention, but that the true nature of her situation was not fully recognized and that no adequate steps were taken to correct that situation and to protect her.

Dr. Bates had referred only to one of Kim's injuries, the fracture of the humerus, on March 22, 1975. One is left to wonder how much more critical would his comment have been had he reviewed all of the injuries and illnesses Kim suffered and all of the persons who failed to take adequate measures to ensure her protection.

Dr. Bates then moved on to speak of sexual abuse as distinct from physical abuse.

In Kim's case, bruises, fractures and haemorrhages of the brain indicated she had been physically abused. Some of the bruises were in unusual areas, such as the genital area. They, with the erythema and oedema around the hymen and the dilation of the anus, were certainly the result of sexual abuse.

Dr. Bates testified that sexual abuse is known to occur, but is not dealt with in great detail in the available literature. It occurs quite frequently, perhaps as often as physical abuse.

Dr. Bates wondered as to how long Kim had been sexually abused before it was discovered. That discovery was made during the post-mortem examination.

He testified that whenever a child has any sign of physical abuse, the child should undergo a complete medical examination. That examination must be made by a physician, not a public health nurse or social worker. The child must be completely undressed and examined from the top of the head to the bottom of the feet.

There is no testimony to satisfy me that any such examination of Kim was undertaken before she was admitted to hospital on August 31, 1975. Dr. Jumean did not do it. Dr. Singh's report of March 27, 1975 mentioned various aspects of physical examination, but it does not appear to have been as complete as Dr. Bates envisaged and there is no testimony of any more complete examination by Dr. Singh in relation to that time. Dr. Thorp's report of March 23, 1975 does contain reference to an examination of Kim's "skin, including the diaper area," for signs of bruises, but the examination does not appear to have been such as Dr. Bates recommended, and there is no testimony of any further examination by Dr. Thorp in that instance or until August 31, 1975. On and after June 17, 1975 the Society did not cause it to be done.

Dr. Bates testified that emotional abuse undoubtedly accompanies every situation of physical abuse. Emotional abuse may be more detrimental than physical abuse to the child. Again he mentioned the "subleties" of abuse and the possibility that they were not recognized in Kim's case.

He said that medical care neglect, failure to obtain medical attention for a child promptly upon the occurrence of injury or illness, often accompanies incidents of abuse. He spoke of incidents where earlier fractures are revealed only by X-rays taken as a result of unrelated illness or injury.

In Kim's case the fractures of her ribs some weeks earlier were not revealed until X-rays were taken after her admission to hospital with a fractured arm on August 31, 1975.

He said that abuse and neglect form a broad spectrum. He said that in Kim's case

> "...we can certainly see that there was physical and sexual abuse undoubtedly emotional abuse and I'm sure, a certain degree of emotional neglect and perhaps medical care neglect."

I believe Dr. Bates is too kind to whoever was involved in the incident in which Kim suffered the fractured ribs in the summer of 1975. There was no testimony upon the Inquiry that she received any medical attention for them. That satisfied me that Kim was a victim of medical care neglect within Dr. Bates' definition thereof.

Dr. Bates then moved on to a discussion of the Central Registry of cases of child abuse maintained by the appropriate Department or Ministry of the Government of the Province of Ontario since the mid-1960's. At the time of the Inquiry that Ministry was the Ministry of Community and Social Services.

Dr. Bates understood that the Central Registry was designed to receive reports from children's aid societies as to instances of abuse of children. He said that the number of such reports in 1977 greatly exceeded the number in 1976. He understood there were 1,045 such reports in 1977. He related that increase to publicity given by the media to incidents of deaths of children as a result of abuse. He felt that relationship was unfortunate.

I would note that Kim's death from abuse occurred in 1976, but it was not widely publicized and identified as such until December, 1977.

He felt that the statistics emanating from the Central Registry were not reliable. He understood that some children's aid societies did not complete reports promptly or adequately. Thus the number of reports filed is not an accurate measure of the number of incidents of abuse.

The validity of Dr. Bate's statement is supported by Kim's case. Her fractured humerus in March, 1975, her later illness, her black eyes, and her fractured ribs in the summer of 1975 were not the subject of any report to the Central Registry until September, 1975, after she was admitted to hospital with another fracture.

Dr. Bates pointed out that the matters reported to the Central Registry were related to physical abuse only. On the basis of his understanding of the number of incidents reported in 1977, the incidence of physical abuse was at a rate much below the rate suggested by studies in other comparable jurisdictions. If other types of abuse and neglect were added to incidents of physical abuse, the total in Ontario might, on the basis of those studies, be about 9,000 incidents of child abuse or neglect each year.

He said that a child who has been abused in one way may eventually be abused through the entire spectrum of abuse and neglect which he defined. Thus when one form of abuse is observed those managing the case should be aware that something more devastating may happen. He called it a "continuum of abuse," first observed as a failure of an infant to thrive and then proceeding to bruises and fractures.

Kim's case was an example of that. Her bruises and fractures were telltale signs of abuse. They should have been recognized as indications that more would happen.

Dr. Singh recognized it when he wrote, on March 27, 1975:

> "...I would strongly suspect that the battered child syndrome is present and if we do not protect this child at the present stage, she might end up with a fractured skull or some other fractures later on in her life."

His prediction was accurate, even to the nature of the injury which caused Kim's death.

No one, not even Dr. Singh, followed up on his warning.

Dr. Bates regarded abuse of children in its broad spectrum as a major problem in our community. He did not use the word "community" in the sense of local or municipal community. It can form a cycle whereby an abused child becomes an abusive parent. He did not suggest that every abused child became an abusive parent, but he did suggest that every abusive parent had been an abused child. He said that, on information which he regarded as reliable, perhaps a majority of the persons confined in the Mental Health Centre at Penetanguishene had been abused as children.

For that reason Dr. Bates felt that programmes to prevent abuse were essential. If successful they would break the cycle. That will involve moving back into the childhood of the abusive parents to try to learn the cause of their abuse of their children.

He said that requires adequate investigation. It is not done well enough. Persons who lack the necessary skills are assigned to the task of investigation. Too often the same person, after having investigated the situation and pursued it by proceedings in a court, is expected to provide help to the family. That person then may encounter the parents' hostility arising because of the investigation and court proceedings. That is a dilemma faced by children's aid society workers. It is hard to overcome.

I note that Kim's case presented some indication of that dilemma. There was some suggestion that Mr. Carter had some difficulty in dealing with Jennifer Popen and Annals Popen prior to the completion of the hearings in the Provincial Court (Family Division) of the County of Lambton. There was testimony to suggest that Jennifer Popen harbored some animosity towards Mrs. Lo while she supervised Kim's care and that animosity became so marked that Mrs. Lo noticed it late in July, 1976 after she advised Jennifer Popen that the Society would apply for an order of supervision.

I am satisfied that in Kim's case the Society did not, during her lifetime, make any reasonable effort to investigate the background and childhood of either Jennifer Popen or Annals Popen.

Dr. Bates testified that police officers were instructed in methods of investigation. He felt that physicians and children's aid society workers and public health nurses were not taught enough about how to investigate. As a result they do not report upon matters that are crucial to a determination of the issue as to whether or not a child has been abused.

It would seem to me that that is what happened in Kim's case, particularly after her return to her home on May 27, 1976. She was abused severely and over an extended period of time between that day and the date of her death less than three months later. The abuse, the signs of which were so horribly apparent upon the post-mortem examination, was not detected or, apparently, even suspected during all of that time. During all of that time she was in the care and custody of the Society. During all of that time Mrs. Lo visited the Popen home often, Mrs. Maughan visited on occasions and Mrs. Kuly visited once, most recently the day before Kim died.

I recognize the limitations upon Mrs. Maughan and Mrs. Kuly. None of that applied to Mrs. Lo. Three possibilities exist. The first is that she was not aware and had not been instructed by Mrs. Harvey as to what she should be looking for and how she should proceed to find it. The second is that she was unable to recognize it when she saw it. The third is that there was a combination of the two. I tend to lean toward the view that it was a combination of the factors.

Dr. Bates felt that organization will be required to deal with the problem of child abuse. People with different professional or quasi-professional backgrounds are needed. Particular skills and expertise are needed. The organization would involve social workers, police, health nurses, and physicians and laboratory and X-ray facilities.

He believed that some problems exist for those who seek to deal with the problem. He said that too often reliance is placed upon the presence of physical findings and not upon the results of interviews conducted by such workers.

In that regard Dr. Bates seemed to be addressing what he perceived to be problems of having certain information or opinions admitted as evidence upon proceedings in court. He spoke of the desirability of social workers being qualified as expert witnesses. He made the following statement based on his observations of proceedings in some courts:

> "I think very often judges rely more on the physical evidence of abuse and less on the pathology detected by the social worker in the home and the implications of that pathology. It's for that reason that I feel that we need to have expert witnesses in the social work field to bring into the courtroom research and other data about the importance of the interview, the pathology detected. We know that if a parent has a certain background history, that it may be next to impossible to help them and that that child may be in jeopardy. May be in jeopardy not because of the injuries we see now but because that child is a special child for certain reasons that the parent can't stand and I'm going to talk about that shortly."

However his remarks are of perhaps wider application. When Mrs. Saul, Mrs. Hoad and Police Constable Gander visited the Popen family they largely confined themselves to a search for marks of physical injury. Mrs. Saul did become concerned by what she observed even in the absence of much in the way of physical marks. But nothing came of it. Police Constable Gander retained an interest for a short while.

One is left to wonder how different may have been the actions of those three on June 17, 1975 had they found, say, a large and colorful bruise or burn on Kim's body.

Perhaps that is another example of the problem stated by Dr. Bates.

Dr. Bates stressed the important of laboratory and X-ray facilities and personnel. An X-ray showing a certain type of fracture of an infant's bone, when supplemented by an expert's opinion to the effect that that type of fracture occurs only in cases of abuse, can tell the investigators that the child has been abused.

Dr. Bates expressed some concern over what he perceived to be the almost impossible task of having colour photographs admitted as evidence in court proceedings.

He then returned to his discussion of the causes of abuse and of the types of parents who may abuse children.

He said that persons other than the parents may abuse children. A great deal is known about abusive parents. It is known that some children are "high risk children" and that there is a factor which precipitates abuse.

He spoke of lack of mothering. This refers to the childhood of the abusive parent. He said it was "undoubtedly the most important factor in preparing a child to be a parent."

With direct reference to Kim's case he said Jennifer Popen was "destructive" and she was not prepared to be a mother.

Dr. Bates said it was crucial for case planning that the social worker obtain that information about the parent's childhood. He said

> "if a social worker doesn't get that information, she is or he is grossly deficient in the ability to make a diagnosis on a family of child abuse."

From the testimony upon the Inquiry I am satisfied that the Society had not, during Kim's lifetime, obtained that information in respect of the childhood of either Jennifer Popen or Annals Popen. I accept Dr. Bates' testimony that such information is necessary for the preparation of a plan for the care of a child who has been abused and for any accurate assessment of the situation in that child's home and family.

In Kim's case the Society did not obtain the information. The decision to return Kim was made without adequate information.

Dr. Bates said that very frequently abusive parents are found to have been wards of children's aid societies, to have been beaten and to have run away from home. Some have been sexually assaulted. Generally they do not have a good memory of their childhood. I would note that if Jennifer Popen is to be believed, something I am not prepared to do, several of those factors applied to Jennifer Popen's childhood. She was not a ward of a children's aid society, but she was placed with another family. She did not run away. She said she was beaten. She said she was sexually assaulted. She said her memory of her childhood was not a happy one.

Dr. Bates spoke of the "isolation" of the Popen family. He said abusive parents

> "are isolated in our community, they don't use community resources, there is little contact or little help coming from relatives; they may be hard to find to make a visit say by the public health nurse, and in a sense these people shut themselves inside their home and very few persons really know what is going on in their life."

It would seem to me that that reference to "isolation" is particularly applicable to Jennifer Popen. There was testimony as to her feelings towards some of Annals Popen's relatives.

He spoke of a problem too in relation to the spouse or common law partner or friend living with the abusive parent. Frequently that person comes from a similar background. He or she may be passive, as Annals Popen was, one who tends to withdraw and to be introverted, one who does not communicate well and who cannot protect the child.

Dr. Bates' opinion was that even if one parent had the potential to abuse a child, abuse would most likely not occur if the other parent were a strong, healthy well balanced adult. However abuse may well occur if both parents have the potential to abuse. Abuse may well occur if one parent has the potential to abuse and the other has a passive personality.

Unfortunately for Kim, Jennifer Popen had the potential to abuse her and did abuse her.

Annals Popen was in the mold of the passive partner who did not protect the child.

Dr. Bates continued that he had noted in one of the reports on Jennifer Popen that she had a feeling of low self-esteem and self-confidence. He said such a feeling of hopelessness and inadequacy stems from the childhood of the abusive parent when he or she was made to feel worthless or like an object, rather than a person who was loved and cherished.

Another element of abuse mentioned by Dr. Bates was what he called "role reversal." He said that involved the parent's expectation, often unrealistic, for the child.

In instances where that occurs the parents want the infants not to cry, not to soil diapers, not to have colic and, in general, not to do the various things that infants do. Such parents expect abnormal children. Then, in such a case, when a child acts as a normal child, the parent does not recognize it as a normal development, does not know how to deal with it and feels rejected. Dr. Bates said all of that arises because the parent's childhood did not prepare him or her to be a parent and because the parent is isolated in the community and from the other parent in relation to problems and does not have a good feeling about himself or herself. The only "out" then, said Dr. Bates, is to hit the child to remove the crisis. The child may well be the crisis.

In this connection, Dr. Bates spoke of such a parent expecting the child to "feed well." Kim suffered injuries to her lips said to have been caused while Jennifer Popen was feeding her and experiencing some difficulty. That may be of some significance as perhaps suggesting that there was some presence of role reversal in the relationship between Jennifer Popen and Kim.

Dr. Bates went on to say that abusive parents do not give adequate explanations for injuries suffered by their children.

He related that comment to Kim's case. He asked how did Kim suffer the fractured humerus, a strong bone; how did she suffer the black eyes; how did she suffer the other fractures? He said that if the explanation does not fit the injury one must suspect that the child has been abused. In apparently direct reference to Kim's case he continued:

> "...Are people reluctant to give a story? Do the parents appear inappropriate? Do the parents appear to be inadequate in parenting abilities? And how can a person who is married at age 13 or 14 really fulfill a role as parent? It is very difficult when you have had a poor childhood before that, entered a marriage in early adolescence, not had time to mature, when one is going through puberty and then you are thrown into motherhood and you have missed so many stages of your life already. It all paints a picture of crises and problems to come later."

In my view that testimony of Dr. Bates is a strong condemnation of the Society, particularly Mrs. Harvey. It is a criticism that the facility or organization or procedure was not present in the Society to ensure that all of the necessary background information was obtained before vital decisions in the management of Kim's case were made. The most vital was the decision that she was to be returned to the care of her parents.

One is left to wonder what might have flowed from a change of attitude within the Society. Mrs. Harvey told Mrs. Farina that the Ontario Association of Children's Aid Societies could not tell the Society anything helpful. What might have happened had the attitude been that the Society could and would learn from others. Perhaps even one lecture from one such as Dr. Bates or Dr. Turner to Mrs. Harvey and the staff of the Society might have been enough to have saved Kim's life.

Having heard Dr. Bates as a witness upon the Inquiry, I feel I have developed some awareness of what one working in the fields of child care, child welfare and child abuse should be alert to notice and assess. How much more might those who had some training, knowledge and experience in those fields have gained from listening to Dr. Bates, Dr. Turner and other of their stature.

In Dr. Bates' opinion, child abuse is not "a one shot thing." It usually is a problem over a considerable period of time unless triggered by some acute crisis in the home.

Dr. Bates testified that the majority of very serious cases of abuse in his practice have been inflicted upon children younger than five to six years of age. He said that some who have investigated the field of child abuse believe that if a child has been seriously abused until the age of three or four years, there will be considerable difficulty to help that child become a healthy adolescent and adult able to "function on an interpersonal relationship in our community." He said the the higher percentage of abuse is inflicted upon infants between their dates of birth and their third birthday, after that they seem to learn to avoid abuse.

Kim did not reach the age by which she might have learned to avoid abuse.

Dr. Bates then turned to a consideration of the types of children who, predictably, might be abused.

He said some children are unwanted. A mother may tell a social worker that her child is unwanted, but still the social worker stresses her role as a mother and her duty to her child, offering the help of the social agency and threatening court imposed sanctions. He said the mother's message was clear. She did not want the child, but "we" do not listen. I inferred that when Dr. Bates said "we" he meant society in general and those involved in social work, especially child care or welfare, in particular.

Dr. Bates said that there are children who predictably may be abused. An unwanted child is such a child. But a child who is wanted may be such a child. The child may have been wanted for the wrong reason. Perhaps the child is wanted merely to fulfill a parent's need.

He gave various examples of that sort of situation. He spoke of one instance where the mother, even after the deaths of her children at various times as a result of abuse or neglect, insisted that she would bear another child. Dr. Bates suggested that perhaps that mother was hoping that her next child would be an abnormal child, an exceedingly good baby who would not cry and who would feed well and, in time, would do well at school. Such a child, by such abnormal behaviour, satisfies the mother that she is a fantastic parent. Thus the parent who abused earlier-born children, who, apparently, were normal, might not abuse the abnormal child.

Another wanted child who, predictably, may be beaten is the child who is "difficult." The "difficult" child may be hyperkinetic, may have behavioural problems, may suffer from colic or may be mentally retarded. Dr. Bates said all such children are prone to abuse. Another such child is the child who was premature and therefore required special medical care in the hospital's nursery so that normal bonding between the mother and child did not occur.

Dr. Bates then expanded the list of such children to include children who are "difficult" because of some physical abnormality. He said that the parent of such a child may feel inadequate.

He continued to expand his list. He added a child who may remind the parent of someone or something of whom or of which the parent does not wish to be reminded. The parent then feels that abuse of that child is justified.

He spoke of "other crisis kids." Children with learning disabilities or behavioural problems during school years. He said he felt that in "a fair number" of instances the children's problems stemmed directly from the parents' problems.

Abuse of the child comes when the crisis occurs. Dr. Bates felt that the occurrence of the crisis was inevitable. The crisis can take many forms and have many causes. It may be the child. It may be a marital, financial or health problem in the home. When it occurs it triggers abuse.

In Dr. Bates' opinion too much of the treatment of cases of abuse and neglect is crisis-oriented. He said that the crises is dealt with. A patch is placed on it, but the basic pathology of the abuse or neglect has not been identified and treated. So abuse is repeated at a later date. That latter seems to be in close agreement with the testimony of others that incidents of abuse often recur, often in a progression of severity.

Dr. Bates testified that it is not too difficult to envisage why a child has been abused. He said that "we," from which I inferred he meant those who work in the field of child care, especially in relation to abuse, know a fair amount about the parents and that there are "certain high risk kids" and that when the crisis comes the parents, because they are "isolated," are unable to see the resources which may be available in the community. He said it was "frequently very frightening" for such parents to ask for help.

Dr. Bates testified that in many instances parents have presented children at hospitals when the children are suffering from various illnesses or injuries. In such instances, he feels that they often, perhaps in a majority of cases, are mutely seeking help. He said that in such instances the parents are not prepared to acknowlege that they have abused the children; nor do they want to be told that. They do need to be "built up." The medical personnel must become involved in the process. That may be accomplished by stressing any indication that the children have received some good care, as in nutrition, acknowledging that there are problems to be encountered in raising children and offering the hospital's support and help in meeting those problems.

With direct reference to Kim's case, Dr. Bates suggested that perhaps she had been brought to the hospital so that the parents might obtain help. The help was not given.

In my understanding of Dr. Bates' testimony that was conjecture and he did not advance the suggestion as being a representation of his considered opinion. I am not satisfied that the evidence upon the Inquiry would support such a conjecture. In my view Jennifer Popen's conduct upon presenting Kim at the hospital on two occasions and her maze of lies and deceit throughout Kim's life and even after her death negative that conjecture. I am aware that Jennifer Popen in her testimony said she was really asking for help, but her testimony was given about two years after Kim's death and after Jennifer Popen had been interviewed by members of various professions in a number of different settings, including psychiatric and custodial institutions. In my view Jennifer Popen's testimony in that area was merely a further demonstration of her deviousness.

Dr. Bates queried whether or not Jennifer Popen had suffered from post-partum depression after the birth of her son, Karie in July, 1976. He had seen some of the written reports about her. Dr. Bates did not identify the reports which he had read, but I have noted particularly that of Dr. Selwyn M. Smith, Director of the Department of Forensic Psychiatry, Associate Professor of Psychiatry, University of Ottawa. Dr. Smith's report is dated December 12, 1977 and was attached to and formed part of the pre-sentence report upon Jennifer Popen following her having been found guilty of manslaughter.

Dr. Smith in his report wrote of the marriage of Annals Popen and Jennifer Popen as having been "stormy and fraught with difficulties." He wrote that relationships between the couple deteriorated after Kim's birth and were exacerbated by Annals Popen's lack of interest in Kim.

Dr. Smith's reference to Kim's having been abused by Annals Popen when he was under the influence of alcohol was apparently based on statements by Jennifer Popen.

Dr. Bates' query would appear to have arisen at least in part from the following paragraphs in Dr. Smith's report.

> "Approximately five weeks before the death of Kim, another child, Kerry (sic), was born on July 6, 1976. Kerry (sic) was a breech birth and Mrs. Popen left the hospital earlier than advised because she had been told that Kim had been crying for her and was not eating properly. Shortly after her return home, a number of problems ensued. Kerry (sic) developed a fever, had

> diarrhea, and was a very fractious and and difficult baby. Mrs. Popen was up most of the night for several nights and described how the child would only sleep when it was held or rocked. In addition, Mrs. Popen was experiencing considerable pain associated with her breech delivery. She did have a 15 year old baby sitter to help her and Kim was spending some time with a neighbour. Nevertheless, Mrs. Popen did not feel well and was taking a number of sleeping tablets and analgesics."

and

> "The birth of Kerry (sic), combined with his need for special care, the demands of housekeeping, and Kim's disturbance while Mrs. Popen was in hospital and her clinging to her mother upon returning home, constituted a fatigue stress which could have thrown this young mother into a frenzied state in which any further demand would trigger off a complex breakdown with loss of control or reason.
>
> It is my view that these above factors are extremely important in going some way towards understanding the very bizarre conduct of this case."

In discussing his own query, Dr. Bates stated that childbirth is a difficult time and that depression may follow delivery. He said that may then be a crisis period requiring delivery of extra resources into a home which even earlier had given cause for concern. That could apply to a home where a child had been battered and then was returned to the home shortly before or after the birth of the younger child. He said:

> "...It is a critical period and when we know that this family is isolated, don't use community resources, and really don't have the wherewithal to know how to parent, it is a bit of a bombshell."

It would seem to me that when Dr. Bates used the word "bombshell" he really was speaking of an unexploded landmine just awaiting detonation triggered by something.

There was no testimony to establish whether or not Jennifer Popen did suffer from post-partum depression following the birth of either or both of Kim and Karie. In my view, it would seem that it would have been incumbent upon the Society, particularly after Karie's birth, to try to determine that question. I infer from Dr. Bates' testimony that Kim's return to her home, whether shortly before or after Karie's birth, was a factor to be considered in that connection. None of the staff of the Society who testified as to the discussions which culminated in Kim's return to her home on May 27, 1976 indicated that the possibility of post-partum depression was considered.

Dr. Bates referred to differences between the West Indian and Canadian societies. He said that some means of discipline which might be acceptable in the West Indies would be regarded as being too harsh and, thus, abuse of the children, if applied in Canada.

Dr. Bates then moved to a discussion of some of what he understood had occurred in Jennifer Popen's childhood in Jamaica. He spoke of her parents having left her as a young child. He queried the degree of feeling of rejection that that leaving might have caused her to have and whether or not the effects of that feeling of rejection could be overcome. He went on to say that in addition there was the element of later abuse to her. Dr. Bates' words were descriptive when he said she was

> "being prepared for a future of a certain degree of chaos."

While those words were spoken by Dr. Bates long after the facts of Kim's case had ended with her death, I infer that Dr. Bates was of the opinion that reasonably qualified and competent persons working in the field of child care or welfare, particularly in relation to protection of children, would have delved deeply into the earlier lives and experiences of Jennifer Popen and Annals Popen. It is the same sort of investigation that Dr. Singh requested in March, 1975 and which was not adequately conducted.

Dr. Bates moved on to discuss Kim's injuries and the explanations for them. He said the practitioner has to look at the injury and the explanation to determine whether or not they fit together. With specific reference to Kim's case he said it must have been known that the injuries and the explanations did not fit together.

Dr. Bates said that practitioners in the field of protection of children from abuse have learned that "the best defence that a person has is a good offence." The practitioner must be able to withstand that offence. That comment begs the question "Did anyone involved in Kim's case withstand Jennifer Popen's defence by a strong offence?" The answer would seem to be "No."

Dr. Bates said that with Kim having suffered multiple fractures:

> "...we know what happened. When we see that type of injury we have to have the situation investigated par excellence. We need to have a psychiatrist see the parents to determine if they have the ability to parent in the future after a treatment program is set up."

and later

> "We have to have specialists looking at these situations."

Any comparison of that statement with what occurred in Kim's case shows how woefully weak was the performance by those responsible for Kim's care, particularly the Society.

Dr. Bates then spoke of the effects of abuse or neglect, in many forms, upon children. Any child who is abused will be affected by the abuse. The effects of emotional abuse may be "more devastating" than a broken bone or a bruise. He said that the protection of abused children requires that they be examined and observed by psychologists, psychiatists and child care workers

> "because these children may become our criminals. I am sure a lot of these

> children end up in Pentang. They have been rejected, they have been neglected, they have been put down and they learn to fight, and if you have been taught as a child that harsh discipline is the right way you will grow up using the same modes of discipline and you will learn that power is right and that you will strive for power and use it."

It would seem that much of that is directly applicable to Kim's case. Jennifer Popen, Kim's mother, appears to have undergone abuse as a child and she, in her turn as it were, imposed on Kim treatment which, in Canada at least, is regarded as abuse of children.

I do not say, nor do I understand Dr. Bates to say, that all or any of what happened to Kim would have been acceptable elsewhere. I understood him to say simply that elsewhere in the world children may, without disapproval of the community, be treated more harshly than children are expected to be treated in Canada. Persons who come to Canada from such localities where they were so harshly treated as children sometimes feel that in Canada they may treat their children in the same way. It is the Canadian community's responsibility to educate those persons that such treatment of children is not acceptable and does constitute abuse of children. That may require social workers to have or acquire special knowledge and skills to understand and deal with the particular problem in Canada raised by the difference between the two communities, one in the land of the parent's childhood outside of Canada and the other in Canada.

Dr. Bates spoke of the unreliability of statistics as to the number of deaths of children caused by abuse. He was "sure" that in 1977 there had been more than the thirteen deaths of children in Ontario attributed to abuse. He acknowledged an absence of data to support his belief. He based his belief on his knowledge of how records are kept and that some injuries really caused by abuse, perhaps a head injury, may be viewed by a coroner or physician as having been caused accidentally, as by a fall.

He referred to Dr. Greenland's 1973 study of child abuse deaths and said that the majority of deaths of children as a result of abuse occur before the children are three years of age. I have read Dr. Greenland's report. Dr. Bates is most conservative when he says merely "a majority." My calculation, based on Dr. Greenland's statistics for the years 1966 to 1970 in Ontario, is that 37 or approximately 92.5% of the forty such deaths of children reported to the Chief Coroner occurred before the children reached the age of three years.

In another paper written by Dr. Greenland for presentation in August, 1978 he expressed concerns not unlike those of Dr. Bates as to the reliability of statistics in the United Kingdom, the United States of America, and Canada. He cautioned against seeking to compare the statistics of any one of the jurisdictions with those of either of the others.

Dr. Bates testified that from 1971 to 1973 he had conducted a study in Australia with reference to deaths of children from abuse. In that study he found that the time period following the arrival of the child in the home from hospital or from foster care was critical. That time period was from one to three months in duration. He believed that the majority of these deaths from child abuse could be prevented.

Kim's case is not an exception to the pattern of the statistics cited by Dr. Bates. She was about ten weeks old when she suffered the first known fracture. She was seven months old when she suffered the second known fracture. In the interim she suffered fractured ribs and bruises in addition to infections and rash. She was nineteen months old when she died as a result of abuse. Kim's death occurred about eleven weeks after her return home and about one month after the birth of her sibling, Karie.

It would seem that Kim's case is a classic example to illustrate Dr. Bates' testimony.

How unfortunate that it was not recognized as such or, if it was recognized, that steps were not taken to protect Kim.

In his practice Dr. Bates has seen a lot of deaths from abuse. He said that

> "...there has always been a tell-tale sign earlier...that should have twigged people off that they had to investigate."

Dr. Bates continued his testimony to speak about decision making. The thrust of that area of his testimony was directed to the role of physicians in cases where children may have been abused or neglected.

In his opinion, a physician in such a case has a multiple responsibility. The physician has a responsibility to the child, a responsibility to the parent or parents of the child and a responsibility to the community, including especially fellow members of the medical professions. That responsibility is to provide the best care possible.

Dr. Bates said that any case of abuse of a child must be recognized as being an emergency situation and must be dealt with adequately.

He suggested that admitting the child to hospital provides immediate protection for the child. It also provides time for investigation of the matter, as by a children's aid society.

Dr. Bates said that members of the medical professions are aware of the provisions of The Child Welfare Act requiring reports to be made to a children's aid society or Crown attorney and protecting anyone who may make any such report in error. In his opinion there is no reason for a physician to fail to comply with the statute by reporting any instance.

He went on to say that a physician may very easily send such a child home from hospital without making any report to a children's aid society or Crown attorney. That would involve risking the child

> "...because we never know what's going on in these homes through an investigation by interview in the emerge [emergency department of a hospital] or in a physician's office or in the children's aid society

> office. We've got to go into the home and see really what's going on and we have to interview neighbours to find out what is happening."

As I reflect upon that last segment of Dr. Bates' testimony I am struck by the utter failure of the Society to meet what seems to be a reasonable standard of this part of case management suggested by Dr. Bates. Sufficient investigation was not conducted. Until the time in February, 1976 when Mrs. Harvey made the basic decision that Kim would be returned home, Mr. Carter had been severely restricted in the performance of what he felt should have been done, especially in relation to investigation of Kim's home, parents and family. There was no testimony to indicate that any real effort was made to obtain information of the sort which became so available after Kim's death, some of which is mentioned in the pre-sentence report with reference to Jennifer Popen prepared in December, 1977. There was no testimony to indicate that any real effort was made to obtain information from relatives and neighbours of Kim's family.

Dr. Bates testified that any such investigation should be conducted by

> "a social worker who has expertise, a social worker who has extra training, a social worker who is respected for her knowledge."

In the same connection he spoke of

> "this terribly demanding role of being a child abuse specialist."

That testimony as to the qualifications which Dr. Bates would require of a social worker responsible for the investigation in a case such as Kim's is another illustration of the inadequacy of the Society in its management of Kim's case. No matter how one may feel towards Mrs. Lo and the position in which she found herself, it remains that she did not approach, let alone meet, Dr. Bates' expectations as to qualifications.

Dr. Bates said the social worker should have expertise; Mrs. Lo had none. He said the social worker should have extra training; Mrs. Lo had virtually no training in child welfare and none in child abuse and certainly she had no extra training. He said the social worker should be respected for her knowledge; Mrs. Lo may have been respected, but no one mentioned that respect was for her knowledge in the area of child abuse and indeed she had no such knowledge and was not a child abuse specialist.

Dr. Bates spoke of the need for development of interdisciplinary teams of workers to manage cases of child abuse. The members of such teams should be recognized as specialists.

He said that there have been difficulties because the various persons who may be involved in a case have somehwat different roles. He mentioned the roles of social workers, police officers and doctors as examples. He said each might not understand the roles of the others. Communication and co-operation may lead to understanding.

He cited the co-operation existing between himself and those working with him at the hospital in Toronto with the Metropolitan Toronto Police Force. He said police officers often know more than some social workers do about some families. He said that by a sharing of information each can better prepare whether for court or for management of the case.

He spoke of the need for a conference of all concerned in a case to be held prior to any hearing in court. He said that is one way of ensuring that all of the evidence will be available for the hearing. In that way adjournments will not be required and time will not be wasted.

I compare that with what happened in Kim's case. There was no testimony of any such conference prior to the various court proceedings. Adjournments were granted because of the absence of a witness. While the proceedings were successful in the sense that Annals Popen entered a plea of guilty and Kim was placed in the care of the Society, they were not successful in any other sense. All of the evidence that was available if a thorough investigation had been conducted was not presented and indeed was not available to be presented. Of course it is fruitless and speculative to wander into the unknown, but I do permit myself to wonder somewhat as to what might have been the results of the court proceedings had Annals Popen pleaded not guilty and had Annals Popen and Jennifer Popen opposed the Society's application.

Dr. Bates testified that while the court may make the ultimate decision the nature of that decision depends upon the preparation of the case and its presentation to the court. If the investigation is inadquate, the court does not receive sufficient information.

He spoke of a judge in the United States of America who told him that the majority of cases lost by the American equivalent of the children's aid society are lost because of inadequate preparation, perhaps inadequate investigation by a social worker or perhaps failure of various people to share knowledge.

Dr. Bates said it is incumbent upon those involved in any case of alleged child abuse to prepare well so as to enable the court to make the best decision. He said:

> "...if we don't do that, we are negligent and the whole chain of dealing with child abuse is only as strong as really our deficiencies."

Dr. Bates was asked as to the availability in 1973 of information or knowledge with reference to child abuse. The question related to the availability of such information to a social worker employed by a children's aid society.

He replied that such information and statistical data has been available for years in both medical and social work literature. Some effort might be involved. The social worker would have to know where to look.

In my view it would not be too much to expect that a social worker by training or experience would learn how and where to look for such information or whom to ask for guidance. Surely that would be expected of any professional person. Similarly in my view a social worker would be expected to assert some effort to acquire necessary or useful information.

Dr. Bates said that considerable literature had been published and distributed in the United States of America. He mentioned various publications by name including one in which he said the problem was described as "the battered child syndrome."

I have looked at Dr. Greenland's report of 1973 and it does contain specific references to a number of books and learned articles published in Canada or in the United States. The earliest so mentioned was an article in Journal of the American Medical Association in 1962. There were two publications in Canada, one entitled "The Battered Child in Canada" and the other, apparently a collection of materials, entitled "Helping the Battered Child and His Family."

Dr. Bates spoke of information being available from parts of the world other than Canada and the United States of America. He mentioned England. Dr. Turner in his testimony had mentioned the case of Maria Colwell in England. The report upon that case was published early in 1974 and reprinted in 1975.

I am satisfied that any social worker or health professional who wished to obtain information upon child abuse could have done so quite easily at any time relevant to the Inquiry and for several years earlier.

Dr. Bates expressed some disappointment flowing from his relationships with the Ministry of Community and Social Services with reference to child abuse. He said that that Ministry showed

> "very little drive...in looking at child abuse as a problem."

Dr. Bates felt that in 1973 and 1974 something should have been done, as a start, to provide some information and education about child abuse on a general basis. He sought financial support to enable a brochure on child abuse to be distributed generally to children's aid societies, social workers and health professionals. He was distressed when that financial support was refused by that Ministry.

Dr. Bates said his request went beyond what Dr. Greenland had done in his report in 1973. Dr. Bates' contact with children's aid societies had demonstrated to him the great need for such a publication. He limited his comments to the children's aid societies in Toronto, but said they wanted something and realized their need for more education upon the subject of child abuse. He said that "we," by which I presume he meant he and at least others at the hospital or hospitals with which he was associated, sought to establish joint programmes with the children's aid societies. He said:

> "...at that point the Ministry was really doing very little that I was aware of in the field of child abuse and it was subsequently the late, late 1976 and 1977 when the Ministry started to have some visibility in the area of child abuse educational programmes."

It may be significant that the Ministry "started to have some visibility" after Kim's death.

Dr. Bates' remarks are a valid and strong criticism, perhaps condemnation might not be too strong a word, of The Ministry of Community and Social Services as it was during Kim's lifetime. There was very little drive from the Ministry in the area of child abuse. The Ministry declined support for an effort in that area by one person of eminence in the field expressing the needs felt by others.

Dr. Bates testified that a number of professional persons working in the field of child abuse were "agitating" for a general meeting of workers in the field to share ideas and to meet the generally felt need for a seminar. The Ministry did convene a meeting of some seven or eight persons from Ontario possessing various levels of expertise in different professions. Those persons did meet and assisted the Ministry in organizing such a conference which was held in February, 1976.

The next portion of Dr. Bates testimony expressed disappointment with and inability to understand the Ministry's attitude and actions after that conference was concluded. On the testimony of Dr. Bates, unchallenged by anyone, I share his disappointment and inability. No explanation of the Ministry's position was given by anyone testifying upon the Inquiry.

Dr. Bates testified that following that conference the group of professionals which had been convened to assist the Ministry in planning the conference wished to remain as a consultative group ready to assist the Ministry in further planning. The group did not ask for any fees, but, I presume, expected to be reimbursed for reasonable out-of-pocket expenses. The Ministry rejected their offer. The Ministry did not want any such arrangement.

The group of professionals represented a considerable body of experience across Ontario. They wanted to assist the Ministry because they realized the importance of the role which the Ministry could fulfill in such an endeavour to provide information to those working in the field. Dr. Bates' approach to the Ministry was that this would be an educational endeavour, but the Ministry did not appear to treat it as a priority. He was confident that others in the health professions and in social work were as distressed as he by the position taken by the Ministry and by its lack of direction.

From Dr. Bates' testimony, which was not challenged upon the Inquiry, I conclude that the impetus for the 1976 seminar came from professional persons outside of the Ministry. They agitated for it. They were called upon by the Ministry to organize it. They did organize it.

There the matter stood. The same professionals made their expertise available to the Ministry without charge. The Ministry did not accept the offer. Dr. Bates sought funding by the Ministry for a brochure on child abuse for general distribution to people responsible for dealing with the problems of child abuse. His request was denied.

Either the Ministry did not realize what was happening by way of abuse of children or it was not sufficiently concerned about it. In either case children in Ontario were the losers. Kim was one of the most tragic of them. The Ministry must bear some responsibility.

In Dr. Bates' opinion, the Ministry was the logical body to assume responsibility for co-ordination of distribution of such material to children's aid societies and other groups. Such distribution is a massive task. The Ministry has a very close relationship with the children's aid societies. The children's aid societies are primarily responsible for the protection of children from abuse.

It would seem to me that The Child Welfare Act imposes upon The Ministry of Community and Social Services, as represented by the Director appointed for the purposes of that statute, a duty to ensure that children's aid societies receive appropriate, helpful material needed by them for the proper performance of their duties under the statute.

I share Dr. Bates' view as to the logic of his request to the Ministry.

From Dr. Bates' testimony I gather that governments in other jurisdictions have required considerable pressure before they have made adequate funds available for educational programmes upon child abuse. Ontario would seem to conform to that mould.

Dr. Bates testified that, in 1978, there was

> "a phenomanal amount of information right now in research into who is a battering parent, the high risk child, why it occurs, and how to treat it."

He acknowledged that some others did not share his view. His view was that, while problems remained and further research would be required, research should be given a lower priority than is given to programmes to prevent abuse of children and programmes to treat families in which abuse of children has occurred.

His view was that, drawing upon the results of research in Canada, the United States of America, England and elsewhere, those responsible for dealing with the problem of child abuse must establish better programmes for the treatment of abusive situations. That should not be solely the responsibility of local communities and their people and resources. The Ministry should support the local community efforts and should provide direction as to what is needed. The Ministry should not request the local communities to establish demonstration proposals to prove something.

In his view better treatment programmes will entail the formation of teams of workers from various professions to work together co-operatively.

He felt that in addition to better treatment programmes, the same co-operative approach could be taken to seek to prevent abuse of children. In his opinion adequate knowledge was available to enable the establishment of such preventive programmes.

Dr. Bates was asked his opinion of Parents Anonymous. He replied that it is another resource to be developed and made available to abusive parents. While he himself was associated with Parents Anonymous he recognized that it might be appropriate for only a small percentage of abusive parents. By reason of its methods, it appeals more to the motivated person who seeks help. He did not feel that Parents Anonymous was the answer.

In Dr. Bates' opinion children's aid societies are the primary resource to deal with child abuse. They should be better developed.

I would comment that it is necessary to recognize the relationship between children's aid societies and The Ministry of Community and Social Services. The societies are dependent upon that Ministry for about eighty percent of their funding. The societies are required by The Child Welfare Act to fulfill certain duties and obligations, including reports to that Ministry. The Ministry is required to provide supervision and advice to the societies. The societies have a degree or an appearance of local autonomy, but one must wonder as to how autonomous they in fact are. In many ways they are an extension of the Ministry.

Ontario

Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

His Honour
Judge H. Ward Allen

1982

VOLUME 4

Printed by A. P. Gordon, Queen's Printer for Ontario.

ISBN for complete set of 4 volumes: 0-7743-7734-8
ISBN for Volume 4: 0-7743-7755-0

Copies are available from:
Ontario Government Bookstore
880 Bay Street
Toronto, Ontario, for personal shopping.

Out-of-town customers write to:
Publication Services Section
5th floor, 880 Bay Street
Toronto, Ontario M7A 1N8
Telephone 965-6015
Toll free long distance 1-800-268-7540,
in Northwestern Ontario 0-Zenith 67200.

Cheques payable to the Treasurer of Ontario.

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Chapter XXXI

Conclusions

Before setting forth the recommendations which I feel flow properly from the events reviewed in this Report it may be helpful to readers of the Report for me to prepare a summary of what appear to me to be some of the more important conclusions, findings or opinions reached, made or expressed by me heretofore in the Report.

That summary will be in the same sequence as the Chapters of the Report.

Chapter I contains an expression of my view that the review of Kim's antecedents and of their lives prior to her birth was limited and not entirely satisfactory because of the unreliability of Jennifer Popen as a witness.

Chapter II mentions a comment by the Honourable Keith C. Norton on September 8, 1978 while he was the Minister of Community and Social Services. It was to the effect that this Report should be mandatory reading for all involved in the detection, management and treatment of cases of child abuse. There was further comment by Mrs. Farina that, in Kim's case, almost every mistake that could be made was made by those who were involved in it at its various stages. I share that view.

In Chapter III I state the obvious. Kim was a victim of abuse. Her mother, Jennifer Popen, inflicted physical injury upon her. Her father, Annals Popen, failed to protect her. In my view others, in varying degrees, bear responsibility for the eventual result.

Chapter III is an admittedly incomplete examination and assessment of some of Kim's antecedents. It demonstrates my inability to rely upon testimony by Jennifer Popen. It sets forth my concern that Annals Popen's testimony, too, is not reliable.

Chapter IV is a summary of some of the major events in Kim's life which are examined in greater detail, along with other matters, in the following Chapters of the Report. Upon Kim's hospitalization in March, 1975, Dr. Singh recorded the first suspicion that she may have been abused. Mr. Khattab did not pursue the matter as Dr. Singh requested. No report was made to the Society or Crown Attorney. In June, 1975, Dr. Jumean reported, by telephone, to the Sarnia Police Force and The Lambton Health Unit, that there was an allegation or suspicion that Kim had been abused. He made those calls ten days after he had seen Kim and heard the allegation. The Society was informed by the police the next day and visited Kim immediately. Mrs. Harvey assumed responsibility for the case, but it did not receive any further attention. On August 31, 1975, Kim was again hospitalized with serious injuries and again the suspicion of abuse was recorded. The Society and police were informed. Kim was released from hospital into the care of the Society. That was later confirmed by an order of the Provincial Court (Family Division) of the County of Lambton in February, 1976. Her parents were charged under section 40 of The Child Welfare Act. Annals Popen pleaded guilty and the charge against Jennifer Popen was withdrawn. On May 27, 1976, Kim was returned to her parents' home. On August 11, 1976 she died as a result of injuries admittedly inflicted by Jennifer Popen.

Chapter V contains a review of the testimony relating to Kim's admission to hospital in March, 1975. I am prepared to accept Jennifer Popen's acknowledgement that she caused the injuries which led to that admission. I reject Jennifer Popen's testimony that those injuries were "an accident." I find that the discharge summary signed by Dr. Jumean is in error to ascribe the fracture of Kim's humerus to a fall. I reject Mr. Khattab's testimony that his assignment was "just to talk to the mother." His statement that he had no information about child abuse or the battered child syndrome is a startling admission of incompetence and ignorance and, when coupled with his admitted failure to inquire about such things, wilful blindness. I am critical of others for not having pursued the matter with Mr. Khattab.

In my view the circumstances surrounding Kim's injuries and admission to hospital in March, 1975 were such as to require a report to have been made to a children's aid society or Crown attorney pursuant to section 41 of The Child Welfare Act. No such report was made. That may in part be attributable to the procedures in the hospital and to the understanding which some doctors and nurses expressed as to the relationship among and between them and as to the reliance of some upon Dr. Jumean, as the family doctor, to do what was required. In my view the failure to make the required report had minimal effect upon the tragic development of Kim's life.

I reject, as being of recent invention, Jennifer Popen's testimony which seemed to suggest that what she did was in an attempt to obtain help.

Chapter VI reviews events in Kim's life from April 3 to August 31, 1975. It was during this period that Mrs. Fay Popen expressed concern to Dr. Jumean who telephoned the Sarnia Police Force on June 16, 1975. On June 17, 1975 the police advised the Society who promptly visited Kim. Despite the opinion and decision of Mrs. Saul and Mrs. Harvey that the Society should be involved in Kim's life the matter was not dealt with. The Society did not open a file. It conducted no investigation of the most recent incident or of earlier incidents of alleged abuse to Kim, including that of March, 1975.

I reject the testimony of Mrs. Harvey and Mr. Carter that Kim's case was discussed by them on August 29, 1975. There is no factual basis for the item in the Society's records under that date.

I do not accept the testimony of some of the personnel of the Society to the effect that the failure of the police to advise the Society that Dr. Jumean had telephoned the police contributed to the Society's failure to fulfill its tasks. Simply put, the Society had a duty to investigate the allegations and it did not do so.

The events in this period of time demonstrated the Society's lack of appropriate procedures.

The recordings in the Society's files were shown to be unreliable.

On June 17, 1975, Mrs. Harvey assumed personal responsibility to ensure that Kim's case was opened in the Society and assigned to a long term worker. She did not do either. She had no explanation for her failure.

During this period of time others, such as Mrs. Hewitt, Dr. Thorp and Mrs. Fay Popen, had ample information to require them to make a report pursuant to section 41 of The Child Welfare Act. That they did not had minimal effect upon the tragedy, particularly in light of the Society's failure to investigate the case promptly after June 17, 1975.

Chapter VII reviews the events from August 31 to September 5, 1975. Many who were associated with Kim's admission to hospital in March, 1975 and the events of June, 1975 were again involved. Dr. Singh again suggested the possibility of abuse. Mr. Khattab again did little. The Society did little to investigate any or all of the allegations or information it had.

Chapter VIII is a review of events from September 5, 1975 to February 25, 1976. There were procedural problems and long delays in the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act and in the Society's application in respect of Kim. Kim was released from hospital to the care of the Society and was placed in an excellent foster home where she was well and lovingly cared for.

During this period the Society did virtually nothing more than provide physical care for Kim. Mr. Carter, with Mrs. Harvey's approval, did not conduct the necessary and usual investigations nor prepare and record any plan for Kim's care by the Society. He merely prepared the Society's application for presentation in court and that was not done fully or well.

It was during this period that Mrs. Harvey announced her intention to return Kim to her parents even over the strong objections of some of the staff of the Society and police officers. This was a further demonstration of the absence of adequate procedures in the Society.

I find that the Society was aware of and did not oppose the arrangement between the Crown Attorney and Mr. Higgins for the disposition of the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act.

The transcript of the court proceedings on February 25, 1976, coupled with the testimony upon the Inquiry, demonstrates further the dominant role of Mrs. Harvey in the Society and the absence of appropriate procedures. In my view the Society failed Kim and the court by failing to apprise Judge Nighswander of all of the information which might have been presented to indicate the true nature of Jennifer Popen's involvement in Kim's injuries.

Mrs. Harvey made no notes as Judge Nighswander delivered his reasons for judgement. The Society did not obtain a copy of those reasons.

The Society's personnel erroneously believed that the disposition of the charge under section 40 of The Child Welfare Act restricted them in the presentation of the Society's application.

Chapter IX deals with Kim's life from February 2, 1975 until her death. Mrs. Harvey removed Kim's case from Mr. Carter and assigned it to Mrs. Lo. Mrs. Harvey told Mr. Carter the transfer was made for ethnic reasons. She denied that upon the Inquiry and her real reasons are obscure.

Mrs. Lo did not have training or experience to enable her to manage Kim's case. Mrs. Harvey did not provide adequate supervision to Mrs. Lo. Mrs. Lo was not even aware that her task would include some effort to determine the identity of whomever had abused Kim.

Mrs. Lo and Mrs. Harvey were remiss in not arranging for Kim to be examined by a physician at appropriate intervals after her return to her parents' home in May, 1976.

The validity of the pre-sentence report prepared by Mr. Brouwer is suspect because of the limited inquiries he made. However that pre-sentence report did contain Dr. Curtin's report and note which, had the Society's personnel taken the trouble to read them, should have alerted the Society to the possibility that Kim might be exposed to danger.

I was struck by the insular attitude of the Society. Its personnel seemed to expect others to communicate with it and to give it information, but they, with rare exception, did not initiate communications with other agencies in the community.

I also noted that both the Society and the Probation Services assigned major responsibilities in Kim's case to inexperienced persons, Mrs. Lo and Mrs. Maughan.

Again the reliability of the recordings in the Society's files is questioned. Mr. Carter's summary of the court proceedings of February 25, 1976 is incomplete and inaccurate as is Mrs. Lo's recording following the proceedings of March 29, 1975. Mrs. Kirby's and Mrs. Lo's recordings do not agree in some substantial aspects. The recordings are not accurate in relation to the making of the decision that Kim would be returned to her home, either as to when, why and by whom that decision was made.

Chapter X sets forth the results of the post-mortem examination and the opinions of Dr. Patodia and Dr. Bates based thereon.

Dr. Patodia found Kim's death to have been the result of injuries to her head suffered within hours of her death. He noted external marks of violence. Dr. Bates stated that the injuries suffered by Kim were consistent with her having been abused.

Chapter XI deals with events immediately following Kim's death. The actions and attitudes of Mrs. Harvey in relation to Kim's brother, Karie, after August 11, 1976, appear to me to be indicative of the weaknesses in the Society which contributed so greatly to Kim's tragedy. Even after seeing Kim's body and her terrible injuries, Mrs. Lo did not conclude that Kim had been abused by her parents or one of them. The Society's personnel did not vigorously pursue a request for a copy of the post-mortem report. It was accepted, without confirmation, that Karie was being cared for by persons other than his parents. The Society did not initiate communication with other agencies, but, somewhat belatedly, acted in response to the urging of the Crown Attorney and The Lambton Health Unit. But for the intervention of others Karie might have been left in the care of Annals Popen and Jennifer Popen and exposed to the same risk as had Kim. Mrs. Harvey said she could not act with reference to Karie until a charge was laid in connection with Kim's death or until there was evidence he had been abused. She had not sought legal advice even though it was available by reason of the decision of the Board of Directors of the Society some months earlier. She continued her practice of making important decisions without adequate or any consultation.

Chapter XII sets forth my assessment of Jennifer Popen as a person whose testimony upon the Inquiry was not worthy of belief. I express criticism of the Society for its failure to make any investigation of Jennifer Popen's life history to ascertain what effect, if any, it might have had upon her in relation to her care of Kim.

I am satisfied that all of what Jennifer Popen told the doctors and others in relation to Kim's injuries was false insofar as it was a denial of her responsibility for Kim's injuries. Jennifer Popen caused the injuries. They were not the result of accidents. Those findings relate as well to the injuries set forth in the post-mortem report.

Chapter XIII contains my assessment of Annals Popen as a pathetic man, but one not deserving of pity. I am not satisfied that he caused any injury to Kim, but he was not prepared to recognize what was happening. He did not protect Kim. His testimony is not reliable.

Chapter XIV examines Mrs. Harvey's role. In June, 1975 she assumed personal responsibility for Kim's case, but she did nothing. In September, 1975, when Mrs. Harvey again learned of Kim's case because of another incident of abuse, she did not frankly acknowledge her earlier default. That lack of frankness continued even in some of her testimony upon the Inquiry.

In September, 1975 and thereafter Mrs. Harvey did not provide adequate supervision to Mr. Carter and to Mrs. Lo. She did not ensure compliance with the provisions of The Child Welfare Act and the Regulations made thereunder. She did not ensure an adequate investigation of all of the allegations of abuse to Kim. She made decisions without consultation with others. She did not ensure that the files of the Family Services Department of the Society in relation to Kim were satisfactorily maintained. She did not ensure that a plan for management of Kim's care was prepared and recorded.

In her testimony Mrs. Harvey emphasized the desire to have an early hearing of the Society's application for wardship of Kim. In fact it was not heard until about six months after it was initiated. Mrs. Harvey was responsible for some of that lengthy delay because of her failure to supervise Mr. Carter and to ensure that the Society was prepared for the hearing. Preparation would have included investigation and assurance that all necessary witnesses were present.

Mrs. Harvey's failure to give any assistance or advice to Mr. Carter to overcome Mr. Higgins' attempts to restrict Mr. Carter's contact with Annals Popen and Jennifer Popen was an element in the unsatisfactory preparation of the Society's application.

Mrs. Harvey's failure to have any adequate conference prior to the hearing was another element in that unsatisfactory preparation.

The lack of preparation was demonstrated by the inadequate or incomplete presentation of all of the material that should have been adduced upon the hearing. Mrs. Harvey's failure to cross-examine Jennifer Popen was an illustration of her inadequate representation of the Society.

Another illustration of the inadequacy of the preparation and presentation of the application was Mrs. Harvey's submission that wardship for a period of two months would be sufficient. Mr. Carter was not aware that she would make that submission. Until it was made he had understood the Society sought wardship for six months. Mrs. Harvey's testimony purporting to explain that was entirely unconvincing.

Mrs. Harvey's deficiencies as the Society's court worker are all the more noticeable because of her refusal to attend a seminar for court workers and her failure to request the assistance of a solicitor even though, just weeks earlier, she had persuaded the Board of Directors of the Society to provide funds for that purpose.

By February, 1976 Mrs. Harvey had decided that Kim should be returned to her home. She made that decision without any adequate conference. She persisted in it over the combined objection of police officers and some of the personnel of the Society. The decision as to when the return should be effected was made during a charade of a conference. That total decision was defended by Mrs. Harvey even in the face of testimony of well-qualified social workers who said they could not find any basis to support it and who were adversely critical of it.

The transfer of Kim's case from Mr. Carter to Mrs. Lo was another example of Mrs. Harvey's abuse of her position to make and execute decisions without any appropriate conference.

Mrs. Harvey did not adequately instruct and supervise Mrs. Lo in her duties. Even in late July, 1976 when Mrs. Lo reported some unsettling changes of attitude in the Popen home, Mrs. Harvey gave her no particular advice or assistance to seek to ensure Kim's safety.

I am satisfied that Mrs. Harvey, despite her impressive credentials, lacked an adequate knowledge of The Child Welfare Act and of child care and protection practices and procedures currently acceptable in 1975 and 1976.

Chapter XV contains my comment upon the role of Mr. Lovatt. His virtual abdication of involvement in and responsibility for management of cases permitted Mrs. Harvey to have a position of dominance within the Society and a position of unchallenged authority in Kim's case. In my view Mr. Lovatt was derelict in performance of his duties.

In many areas the organization, administration and operation of the Society were inadequate and unsatisfactory, even deplorable. The practices and procedures of the Society in relation to Kim did not satisfy or meet the standards which well-qualified witnesses upon the Inquiry said were usual, normal and reasonable for such a case. Mr. Lovatt and others of the Society's personnel were similarly lacking in knowledge and expertise. Those deficiencies substantially contributed to the tragedy of Kim. Mr. Lovatt, as the Local Director of the Society, must bear responsibility therefor.

Mr. Lovatt was genuinely interested and concerned about the well-being of children. He wanted to succeed. He failed as set forth in this Report.

Mr. Lovatt was or should have been aware of the deficiencies described by Mr. Zwerver in his report to the Board of Directors and in his testimony. Mr. Lovatt should have acted to correct the situation even prior to Mr. Zwerver's appointment to the Society. He did not.

Mr. Lovatt was not able to succeed even in the limited area to which he largely confined himself. That was the area of financial affairs. He was unable to obtain the approval of the Minister of Community and Social Services for the estimated expenditures of the Society in 1978. Others subsequently did obtain such approval and attributed their success and his failure to the respective use each had made of information from the Society's records.

Mr. Lovatt's failure to advise the Board of Directors of the circumstances of Kim's death when it occurred in August, 1976 is an example of his inability or unwillingness to recognize and fulfill his responsibility to the Board of Directors. He maintained that silence until December, 1977 when the Society's involvement in Kim's care became a topic of public discussion. Even then his report to the Board of Directors was incomplete and inaccurate.

In this Report I have commented upon the insular attitude of the Society within the community. Mr. Zwerver in his testimony described one instance wherein an employee of the Society failed to respond adequately to a call from another agency. Mr. Lovatt must bear responsibility for all of that.

I have written of Mrs. Harvey's failure to provide adequate supervision to Mr. Carter and Mrs. Lo. In her turn she received no supervision from Mr. Lovatt. He deferred to her and accepted her oral reports, virtually without question, suggestion or comment.

In my view Mr. Lovatt spoke ill of himself when he testified that the Society was unable to attract well-qualified workers to its staff during his service with the Society. If that was so, he was responsible for the state of the Society from the date of his appointment as Local Director. I am not aware that he expressed any such opinion before testifying upon the Inquiry or that he sought anyone's assistance to employ such workers.

Mr. Lovatt sought some solace or refuge by attributing to the Sarnia Police Force responsibility for inadequate investigation and actions in 1975. While I have expressed some criticism of the Sarnia Police Force, Mr. Lovatt can take no comfort from that. That effort by him is a further illustration of his own inadequacy.

Mr. Lovatt may evoke sympathy as one whose career was shattered by revelations in December, 1977. However, he must bear ultimate responsibility for the existence of conditions within the Society which were so significant in the development and the conclusion of Kim's tragedy.

Chapter XVI sets forth my views upon the role of Mr. Higgins. I am satisfied that, as a barrister and solicitor, he acted in the best interests of Annals Popen and Jennifer Popen who were his clients in late 1975 and early 1976 and of Jennifer Popen who was his client in later 1976 and in 1977. He felt no direct obligation or duty to Kim during her lifetime. In the court proceedings of particular importance to the Inquiry he obtained good results for his clients. He also was responsible for the Court's obtaining the pre-sentence report. In that way Dr. Curtin's views became available to the Society. It is no fault of Mr. Higgins that the Society did not exploit that opportunity. It is not his fault that the Society misinterpreted or misapplied what Dr. Curtin had written. It is not his fault that in representing his clients he was able to persuade the Society that it should not do certain things it should have done.

I am satisfied that Mr. Higgins became a member of the Board of Directors of the Society after the proceedings in the Court in February and March, 1976 had been completed other than the imposition of sentence upon Annals Popen. Mr. Higgins did so as a public spirited citizen and without ulterior motives.

At no time did Mr. Higgins take part in any consideration by the Society's personnel of the management of Kim's case. Specifically he did not influence the decision to return Kim to her home. He did not exert pressure upon anyone in that connection.

In my view Mr. Higgins was not in a position of conflict of interest in the spring of 1976. Nothing detrimental to Kim flowed from the fact he did not advise the Board of Directors of the Society that he had acted for Annals Popen and Jennifer Popen.

The situation was different in August, 1976 when he was retained by Jennifer Popen in relation to Kim's death. As a member of the Board of the Directors of the Society, he should have advised the Board that Kim was a ward of the Society when she died and that her parents had been charged with manslaughter. Mr. Higgins' silence had no effect upon Kim who had died.

Upon the Inquiry Jennifer Popen refused to waive the solicitor-client privilege which applied to communications between her and Annals Popen and their solicitor, Mr. Higgins. Thus I was unable to ascertain whether either Jennifer Popen or Annals Popen had given to Mr. Higgins any information as to physical ill-treatment of Kim. In my view, if Mr. Higgins received any such information from them or either of them he would have been required by section 41 of The Child Welfare Act to report that information to the Crown attorney or the Society even if the information was given to him as their solicitor for the purpose of defending and opposing the proceedings against them and in respect of Kim under The Child Welfare Act.

Chapter XVII contains my comment upon the function of the Board of Directors of the Society. No member of that Board, save and except Mr. Higgins, had any knowledge of or involvement in Kim's case. While Mrs. Harvey advised Mr. Allen, as President, of Kim's death, he was left with the impression that Kim had died as the result of an accident. He was not even alerted that the circumstances of Kim's death might lead to adverse criticism of the Society.

The staff of the Society, particularly Mr. Lovatt and Mrs. Harvey, were responsible for the Board's lack of awareness of the matter. There was a complete lack of appropriate communication from the staff to the Board of Directors.

I am satisfied that men and women accepted election or appointment to the Board of Directors of the Society without full knowledge of the duties and obligations attending such membership. There was little effort to acquaint the members of the Board with their duties. The Board, as a whole, depended upon Mr. Lovatt for information and advice.

The members of the Board did not possess any means to assess Mr. Lovatt's abilities or his performance of his duties. Similarly the Board was unable to assess the overall performance by the Society. The Ministry of Community and Social Services gave the Board no advice or information in that regard. The Board did not request any such assistance from the Ministry. In my view the duty of the Board to govern the Society included a duty to ensure that the Society fulfilled its obligations in a satisfactory manner.

That dependence upon Mr. Lovatt and the absence of advice from the Ministry perhaps account for the Board's being unaware of the sorry state of affairs in the Society which was so easily and quickly exposed early in 1978.

In my view the Board of Directors of the Society must bear some responsibility for its own lack of awareness. Mr. Lovatt and others of the staff share in the responsibility.

In part all of that came about because of the absence of effective means of communication within the Society.

The Board did act quickly and effectively when it became aware of the Society's involvement in Kim's life and death. It went beyond its usual reliance upon Mr. Lovatt and sought assistance from other sources.

In Chapter XVIII I review the activities of some of the personnel of the Society and express some criticism of some of them. To some degree they were the victims of the poor organization and administration of the Society and the lack of adequate leadership.

It was the absence of adequate procedures which led to notes made by Mrs. Saul and Mrs. Dick on June 17, 1975 lying somewhere untranscribed until after August 31, 1975. That same absence of procedures led to important decisions, such as the transfer of Kim's case and her return to her parents' home, being made without adequate discussion and study. It led also to some of the problems with the Society's records which, in relation to Kim, were shown to be quite unreliable and inadequate.

In my view Mr. Carter's investigation of Kim's case in preparation for the hearing of the Society's application was inadequate. Similarly, Mr. Carter made a serious error, with Mrs. Harvey's knowledge and concurrence, when he failed to establish and pursue usual case work practices in Kim's case. He and she accepted Mr. Higgins' dictum. His preparation for the court hearing was not satisfactory. His recording in Kim's file for the whole of the period from September 2, 1975 to February 25, 1976 was placed in the file after that later date. He failed to meet the requirement of The Child Welfare Act as to recording his investigation and determination and the basis thereof. He did not prepare or record a plan for the management of Kim's care. For the most part his deficiencies flowed from his own errors or lack of knowledge as to the provisions of The Child Welfare Act and as to his own powers, duties and obligations. He compounded his errors by failing to seek advice.

Chapter XIX reviews the actions of the Sarnia Police Force from the time of Dr. Jumean's telephone call on June 16, 1975. In my view it was inappropriate for the police to wait until June 17, 1975 before advising the Society. While Police Constable Gander could properly rely upon the assessment of Kim's condition made by the Society's workers on June 17, 1975, the police should have investigated further, particularly in relation to the allegation of earlier injury or abuse to Kim.

In my view the police investigation of Kim's case after August 31, 1975 was not satisfactory. Thus the preparation for trial of the charge against Annals Popen and Jennifer Popen was not satisfactory.

I formed the opinion that the police did not fully appreciate the nature of the case. It was treated by them as a minor matter. The absence of notes was striking. The inadequacy of the brief prepared by the police for use by the Crown Attorney is apparent when it is reviewed in the light of the testimony upon the Inquiry. It is inadequate because of error and omission.

It would seem that the police were not fully aware of their powers under The Child Welfare Act. In February, 1976 Police Constable Wyville and Police Constable Charlton accepted Mrs. Harvey's statement that Kim would be returned to her home. I recognize the practical problems that would have arisen had the police done otherwise. If the police had sought the assistance of others, such as the Crown Attorney, The Lambton Health Unit and Dr. McKinlay whose efforts led to Karie's removal from the Popen home on August 13, 1976, they might have forestalled Mrs. Harvey and the Society. The police should not have permitted their valid concerns to be brushed aside so cavalierly.

In Chapter XX I record my opinion of the actions and opinions of various medical doctors who were involved in some way in Kim's life. Although as early as March, 1975, Dr. Singh had recorded his suspicion that Kim may have been abused, no medical doctor made any report as required by section 41 of The Child Welfare Act. I do not accept the view expressed that no such report should be made until the doctor involved has investigated the matter, provided the doctor has reasonable and probable cause for making such a report and is not acting maliciously. In my view Drs. Singh, Thorp, Jumean and Lota failed to comply with the statutory provision. In my view Drs. Bennett, McCrudden and Woods had no obligation to make such a report because the limited information they had was not sufficient to impose that duty upon them.

I reject the opinion expressed by some doctors that, if a doctor were engaged as a consultant to the physician attending a child, a report to the attending physician would satisfy the provisions of section 41 of The Child Welfare Act and fulfill the consulting doctor's obligation thereunder.

In my view the expressed concern that a doctor might be successfully sued for making such a report is ill-founded provided the doctor was not acting maliciously and had reasonable and probable cause for making the report. Certainly in Kim's case there were such grounds and there was no suggestion that any doctor harboured malice against Annals Popen and Jennifer Popen or either of them.

I am particularly critical of Dr. Jumean, the family physician to Kim and her parents. Other doctors prepared reports for Kim's file and for him. They relied upon him to do whatever was necessary on the basis thereof. He did not examine Kim's file which included reports from Dr. Thorp and Dr. Singh prepared during his absence in March, 1975. It was particularly disheartening when, in the same area of his testimony, he stated that on his return he had reviewed the financial matters arising from his patients' files more carefully than he had reviewed the medical records therein. That lack of care in relation to medical records is demonstrated by the error in the form, signed by him, with reference to Kim's discharge from hospital on April 3, 1975.

Even in June, 1975, Dr. Jumean was remiss. I found that on June 6, 1975 he saw Kim with Mrs. Fay Popen who was concerned about Kim's safety. He did not comply with the provisions of section 41 of The Child Welfare Act at any time, but, ten days later, he did telephone the Sarnia Police Force. A delay of ten days is significant in relation to the appearance of injuries such as bruises.

However, adequate performance by the Society of its functions after June 16, 1975 might very well have overcome whatever disadvantage may have flowed from the failure of any medical doctor to make a report to a children's aid society or Crown attorney.

Chapter XXI contains my criticism of St. Joseph's Hospital and its staff. In large measure that criticism is of Mr. Khattab. Some of it has been summarized earlier in this Chapter. Even with his admitted deficiency of knowledge of child abuse he did not seek any assistance and he did not inform anyone, including Dr. Singh, that he was not qualified to do what Dr. Singh expected.

Inherent in the testimony of personnel of the hospital was the suggestion of lines of communication whereby a nurse, for example, having information which raised the suspicion that a child had been abused would be expected to report the matter to the nursing supervisor or to the physician and would not be expected, or even permitted, to report the matter to a children's aid society or the Crown attorney. In my view that is an error. A report to a supervisor or physician does not constitute a report as required by section 41 of The Child Welfare Act.

In summary Mr. Khattab and other employees of the hospital should have made a report to the Society or Crown attorney in March, 1975.

In August and September, 1975 the hospital and its staff acted reasonably, properly and effectively in Kim's best interests. They ensured her safety. They advised the Sarnia Police Force and that led to the intervention by the Society.

The role of The Lambton Health Unit in Kim's life, reviewed in Chapter XXII, was brief and intermittent. It would seem that The Lambton Health Unit has no special legislative power or authority in cases of child abuse. On June 16, 1975 Dr. Jumean spoke by telephone with Dr. Duncan to advise her of the suggestion that Kim had been abused. Dr. Duncan did not make any report to the Society or Crown Attorney, but, in the circumstances, that would appear to be of little significance.

While I have expressed some criticism of The Lambton Health Unit, it does not seem likely that The Lambton Health Unit could have averted Kim's tragedy. To the credit of The Lambton Health Unit, Dr. Duncan joined with others after August 11, 1976 to ensure that Karie was protected despite Mrs. Harvey's initial demurrer.

The involvement of the Office of the Crown Attorney of the County of Lambton in Kim's life is reviewed in Chapter XXIII. That involvement began in September and October, 1975 when the Crown Attorney soundly and reasonably advised the Sarnia Police Force that Annals Popen and Jennifer Popen be charged under section 40 of The Child Welfare Act rather than under the Criminal Code. The Office of the Crown Attorney bears some responsibility for the delays resulting from that charge being presented in provincial court (criminal division) rather than provincial court (family division) and from the non-attendance of at least one essential witness.

I am satisfied that the Crown Attorney acted reasonably and properly in relation to Mr. Higgins' letter containing a proposal for the disposition of the charge against Annals Popen and Jennifer Popen. However Mr. Lang seemed to have overlooked the basis of his original advice to the police. He had advised the police that, because of problems of proof, a charge under section 40 of The Child Welfare Act was more appropriate than a charge of assault under the Criminal Code. In any event both the Society and the police did not oppose the arrangement.

I am satisfied that the professional staff of the Office of the Crown Attorney was not sufficiently large to enable it to meet all of the requirements for attendance in various courts, including preparation for trials in provincial courts. That was a factor in the assignment of the case to Mr. Hibberd without adequate opportunity for him to prepare for the hearing and to apprise himself of all details of fact and of law. He approached the trial with some misconceptions.

After Kim's death Mr. Lang, with others, was able to persuade Mrs. Harvey to remove Karie from the Popen home. However it should be noted that the provisions of section 21 of The Child Welfare Act would have enabled the police to effect that removal even without the Society.

Chapter XXIV contains some comment upon the function of the Provincial Court (Family Division) of the County of Lambton. From time to time when matters relating to Kim were scheduled for hearing or trial, adjournments were necessary because one or both parties to the proceedings was or were not prepared or able to proceed. However it was clear that, because of the pressures upon the Court and the lone Judge sitting in both the County of Lambton and the County of Kent, such adjournments were for quite long times. Lengthy adjournments are not desirable in such matters.

By reason of the paucity of testimony, the Court was not given the benefit of all that was adduced upon the Inquiry. Attention was diverted from Jennifer Popen to Annals Popen. Despite that handicap and despite Mrs. Harvey's submission that wardship for two months was appropriate Judge Nighswander placed Kim in the care of the Society for six months and gave extensive reasons for judgement. His judgement was described as being strong. It was due to his own talents and experience rather than anything the Society had done.

Chapter XXV contains comment upon the slight role of the community in Kim's case. Few members of the community testified upon the Inquiry. It would seem that, as had been noted elsewhere, private citizens preferred not to become involved in cases of child abuse by reporting any observations which might tend to indicate that a child was or had been abused. Highly publicized cases, such as Kim's, may bring about some change.

Francis Kameka saw Jennifer Popen slap Kim and he saw some minor injuries suffered by Kim. He did not believe Jennifer Popen's explanation for those injuries, but he made no report to anyone. I do not think the information he had would necessitate any report.

Mrs. Fay Popen did bring Kim to Dr. Jumean and told him of her concern for Kim's safety. She acted responsibly, but not in compliance with The Child Welfare Act because she reported only to Dr. Jumean and not to the Society or Crown Attorney. Her actions led Dr. Jumean to telephone the Sarnia Police Force ten days later and that led to a report to the Society the following day. I reject Jennifer Popen's testimony that Fay Popen had ulterior selfish motives.

Douglas Vandenberghe and his wife, Judith, were friends and neighbours of Annals Popen and Jennifer Popen. Particularly in the last few weeks of Kim's life they were aware of injuries suffered by Kim and discussed them privately. They were aware of some of the incidents of abuse to Kim. They made no report to anyone. In my view while Mr. Vandenberghe would have been justified in reporting the matter to the Society or Crown Attorney in 1976, his information was not such as to require him to do so. Mrs. Vandenberghe's information was such that she should have made a report upon it to the Society or Crown Attorney. I do not think any report by Mr. or Mrs. Vandenberghe in July or August, 1976 would have affected the course of events.

Deborah Ginn, a baby-sitter, saw some injuries or marks on Kim, but she was not in possession of information such as would require her to report to a children's aid society or Crown attorney.

Chapter XXVI is a long chapter of comment upon the role of the Ministry of Community and Social Services. In my view the Ministry and its personnel failed to fulfill the various duties imposed upon the Ministry by The Child Welfare Act.

The Ministry maintained an intense interest in the financial affairs of the Society. Mr. Macdonald testified that the provision of funds to children's aid societies was the primary role of the Ministry under The Child Welfare Act.

The Director appointed under The Child Welfare Act was, at all material times, Mr. Macdonald, an officer and employee of the Ministry. He did not fulfill his statutory duty to advise, supervise and inspect the Society. In part at least that failure was attributable to changes within the Ministry whereby qualified workers employed in such duties were not replaced when they left the particular Branch of the Ministry. The Ministry did not retain a sufficient number of employees qualified to advise, inspect and supervise the children's aid societies.

The Ministry maintained a Central Registry of Child Abuse. It was of no practical use, at least in Kim's case. Even Mr. Macdonald described it as having been "in limbo" since 1967. Others who reviewed its operation concluded that it was ineffective.

Reports from the Society to that Central Registry in September, 1975 and April, 1976 were such as would have led qualified social workers employed by the Ministry to intervene in the management of Kim's case if they read the reports. No such qualified employee of the Ministry read those reports during Kim's lifetime.

Even after Kim's death and the report thereof to the Central Registry the Ministry was not stirred to much action.

I am satisfied that if a children's aid society sought specific advice from the Ministry during the years of Kim's life, one of the two employees charged with assisting the fifty societies would have responded. That however would not satisfy the duty upon the Ministry, through the Director, to advise, supervise and inspect the societies. The Ministry should have been advising, supervising and inspecting the societies without any request from any society and, if necessary, over the protests of a society.

Much of the Ministry's communication with children's aid societies was directed to the local directors of the societies. While the Ministry had prepared an assessment of Mr. Lovatt's qualifications for the position of Local Director prior to his appointment it did not furnish a copy thereof to the Society. It did not at any later time advise the Society of any real or apparent or apprehended weaknesses or deficiencies in its organization, administration or personnel.

From several witnesses I heard of a pervasive concern within the Society relative to finances. The Ministry seemed to share that concern. Some of its procedures for submission of estimates of expenditures, especially in the years of Kim's life, would tend to enhance such concerns. The procedures were time consuming and burdensome. They created suspense and tension long into each year, especially in 1976 the last months of Kim's short life. In that year they were unreasonable, impractical and unattainable. Even the Ministry could not do what it asked the societies to do, that is, maintain levels of service, but spend proportionately less money doing so, bearing in mind the rate of inflation.

The failure of the Ministry to provide standards of service for use by the societies in various cases is an extension of the Ministry's default in its duty to advise the societies.

The Ministry of Correctional Services had relatively slight involvement in Kim's case. It is reviewed in Chapter XXVII. Mr. Brouwer prepared a pre-sentence report upon Annals Popen in February and March, 1976. He obtained information from only a few sources some of which were of dubious reliability. As a result the pre-sentence report is not as helpful as it might have been. To the credit of himself and the Ministry he did obtain a letter and memorandum from Dr. Curtin expressing opinion and comment upon both Annals Popen and Jennifer Popen. But no one acted upon Dr. Curtin's suggestion that further or other investigations might be helpful. No one specifically advised the Society of the contents of Dr. Curtin's report.

Understandably Mr. Brouwer confined his contact with the Popen family from March, 1976 so that he met only Annals Popen. He did not direct Annals Popen into any particular activity in relation to his problem with alcohol. He accepted what Annals Popen and the Society chose. In June, 1976, while retaining responsibility for the case, he assigned a volunteer, Mrs. Maughan, to provide day-to-day supervision to Annals Popen. Mr. Brouwer correctly regarded protection of Kim as being an adjunct of his own duties in relation to supervision of Annals Popen's term of probation.

Mrs. Maughan voiced some concern or doubt as to conditions in the Popen home. The Ministry gave her no real guidance. Her concerns were not expressed to the Society. I do not think that lack of communication was material to Kim's death.

Unfortunately it was not until August 8, 1976 that Mrs. Maughan decided to speak to Mrs. Lo. She did not have any such conversation before Kim died. Such a discussion might have been helpful. It should have been arranged. If nothing else it might have exposed Jennifer Popen's tactic of criticising the personnel of one agency when talking with a representative of another. It might have prevented Mrs. Maughan from unwittingly expressing understanding of Jennifer Popen's complaints.

In Chapter XXVIII I examine the reports of the Farina Committee and the testimony of its members. These were well-qualified, trained, experienced and practical persons. They quickly found and reported upon a multitude of weaknesses and deficiencies within the Society, its organization, administration, management, personnel, procedures, policies and recording. They criticised the Ministry of Community and Social Services. Their comments, written and oral, have assisted me. Many of the matters dealt with in their reports and testimony were mentioned in or demonstrated by other testimony upon the Inquiry. It was unfortunate that the Farina Committee had redrawn its report after receiving comment thereon from officials of the Ministry of Community and Social Services.

In summary the Farina Committee found that the Society made grievous errors in the management of Kim's case from June 17, 1975 to August 11, 1976. They regarded some decisions as indefensible upon the basis of normal and usual accepted standards of child care practices.

The Farina Committee felt that in large measure the problems within the Society were attributable to lack of leadership by Mr. Lovatt and misguided leadership by Mrs. Harvey.

Chapter XXX contains a review of the testimony of Dr. Turner and Dr. Bates. They appeared as witnesses at my invitation to give me the benefit of their expertise, one as a social scientist, the other as a paediatrician experienced in matters of child abuse. Each expressed his opinion upon a variety of matters raised by counsel. Each suggested items for inclusion in any list of recommendations that might result from the Inquiry.

Chapter XXXII

Summary of Recommendations

Throughout this Chapter I refer to The Child Welfare Act, The Child Welfare, 1978 and the Child Welfare Act. In doing so unless the context indicates otherwise, I have used section numbers as they were in 1975 and 1976. I am aware of the legislation enacted in 1978, The Child Welfare Act, 1978 and the subsequent revision of the statutes in 1980 so that the present legislation is the Child Welfare Act. Regulations made under the legislation have been treated in similar fashion.

Counsel to the Inquiry has prepared a table of concordance of the legislation and regulations as they were in 1975 and 1976 and as they are in the Revised Statutes of Ontario, 1980 and Revised Regulations of Ontario, 1980. That table appears immediately after this note of explanation.

Any recommendation for amendment of the legislation or regulations, even though it is stated as if it were applicable to the former legislation or regulations, is intended by me to relate to the corresponding portion of the present legislation and regulations or to what I perceive to be missing therefrom.

TABLE OF CONCORDANCE

R.S.O. 1970, c.64 as amended up to 1975		R.S.O. 1980 c.66
s. 1(a)	amended by	s. 1(a)
s. 1(b)	amended by	s. 1(l)
		s. 1(b) new
		s. 1(c) new
s. 1(c)	amended by	s. 1(d)
		s. 1(e) new
s. 1(d)	amended by	s. 1(f)
s. 1(e)	amended by	s. 1(g)
		s. 1(h) new
s. 1(f)	amended by	s. 1(i)
s. 1(g)		s. 1(j)
s. 1(h)		s. 1(k)
s. 2(1) repealed		s. 2(1) new
s. 2(2)(a)	amended by	s. 2(2)(a)
s. 2(2)(b)	amended by	s. 2(2)(b)
s. 2(2)(c)	amended by	s. 2(2)(c)
s. 2(2)(d)	amended by	s. 2(2)(d)
s. 2(2)(e)	amended by	s. 2(2)(e)
s. 2(2)(f)	amended by	s. 2(2)(f)
		s. 2(2)(g) new
		s. 2(2)(h) new
s. 2(2)(g)	amended by	s. 2(2)(i)
s. 2(3)	amended by	s. 2(3)
s. 3(1)(a)		s. 3(1)(a)
s. 3(1)(b)		s. 3(1)(b)
s. 3(2)	amended by	s. 3(2)
s. 4(1)	amended by	s. 4(1)
s. 4(2)	amended by	s. 4(2)
s. 5	amended by	s. 5
s. 6(1)	amended by	s. 6(1)
s. 6(2)(a)	amended by	s. 6(2)(a)
s. 6(2)(b)	amended by	s. 6(2)(b)
s. 6(2)(c)	amended by	s. 6(2)(c)
s. 6(2)(d)	amended by	s. 6(2)(d)
s. 6(2)(e)	amended by	s. 6(2)(e)
s. 6(2)(f)	amended by	s. 6(2)(f)
s. 6(2)(g)	amended by	s. 6(2)(g)

R.S.O. 1970, c.64 as amended up to 1975		R.S.O. 1980, c.66
s. 6(2)(h)	amended by	s. 6(2)(h)
s. 6(3)	amended by	s. 6(3)(a)(b)
s. 6(4)	amended by	s. 6(4)
s. 7(1)	amended by	s. 7(1)
s. 7(2)	amended by	s. 7(2)
s. 7(3)	amended by	s. 7(3)
s. 7(4)(a)(b)	amended by	s. 7(4)(a)(b)
s. 7(5)	amended by	s. 7(5)
s. 7(6)	amended by	s. 7(6)
s. 7(7)	amended by	s. 7(7)
s. 7(8)		s. 7(8)
s. 8(1)	amended by	s. 8(1)
		s. 8(2) new
		s. 8(3) new
		s. 8(4) new
		s. 8(5) new
s. 8(2)	amended by	s. 8(6)
s. 8(3)	amended by	s. 8(7)
s. 9(1)	amended by	s. 9(1)
s. 9(2)	amended by	s. 9(2)
s. 10(1)(a)		s. 10(1)(a)
s. 10(1)(b)		s. 10(1)(b)
s. 10(2)		s. 10(2)
s. 10(3)		s. 10(3)
s. 11(1)		s. 11(1)
s. 11(2)		s. 11(2)
		s. 11(3) new
s. 11(3)	amended by	s. 12(1)
s. 11(5)	amended by	s. 12(2)
		s. 12(3) new
s. 11(4)	amended by	s. 12(4)
s. 11(6)	amended by	s. 12(5)
s. 11(7)	amended by	s. 12(6)
s. 11(8)	amended by	s. 12(7)
		s. 12(8) new
s. 11(9)	amended by	s. 12(9)
s. 11(10)	amended by	s. 12(10)
s. 11(11)	amended by	s. 12(11)
s. 12(1)	amended by	s. 13(1)
s. 12(2)	amended by	s. 13(2)

R.S.O. 1970, c.64 as amended up to 1975		R.S.O. 1980, c.66
s. 12(3)	amended by	s. 13(3)
s. 13	repealed	
s. 14(1)	amended by	s. 14(1)
s. 14(2)	amended by	s. 14(2)
s. 15(1)	amended by	s. 15(1)
s. 15(2)	amended by	s. 15(2)
s. 16	repealed	
s. 17	amended by	s. 16
s. 18	amended by	s. 17
s. 19	amended by	s. 18
PART II		PART II
s. 20(1)(a)	amended by	s. 19(1)(a)
s. 20(1)(b)(i)	amended by	s. 19(1)(b)(i)
s. 20(1)(b)(ii)	amended by	s. 19(1)(b)(ii)
s. 20(1)(b)(iii)	amended by	s. 19(1)(b)(iii)
s. 20(1)(b)(iv)		s. 19(1)(b)(iv)
s. 20(1)(b)(v)		s. 19(1)(b)(v)
s. 20(1)(b)(vi)	amended by	s. 19(1)(b)(vi)
s. 20(1)(b)(vii)	repealed	
s. 20(1)(b)(viii)	amended by	s. 19(1)(b)(vii)
s. 20(1)(b)(ix)	amended by	s. 19(1)(b)(viii)
s. 20(1)(b)(x)	amended by	s. 19(1)(b)(ix)
s. 20(1)(b)(xi)	amended by	s. 19(1)(b)(x)
s. 20(1)(b)(xii)	amended by	s. 19(1)(b)(xi)
		s. 19(1)(c) new
s. 20(1)(c)	amended by	s. 19(1)(d)
s. 20(1)(d)	repealed	
s. 20(1)(e)	amended by	s. 19(1)(e)
s. 20(1)(f)	amended by	s. 19(1)(f)
s. 20(1)(g)	repealed	
s. 20(1)(h)	amended by	s. 19(1)(g)
s. 20(2)	amended by	s. 19(2)
		s. 19(3) new
s. 20(3)	repealed	
s. 20(4)		s. 19(4)
s. 20(5)	repealed	
		s. 20(1) new

R.S.O. 1970, c.64 as amended up to 1975		R.S.O. 1980, c.66
		s. 20(2) new
		s. 20(3) new
s. 21(1)	amended by	s. 21(1)
		s. 21(2) new
s. 21(2)	amended by	s. 21(3)
s. 21(3)	amended by	s. 21(4)
s. 22(1)	amended by	s. 22(1)
		s. 22(2) new
s. 22(2)	amended by	s. 22(3)
s. 22(3)	amended by	s. 22(4)
s. 22a(1)	amended by	s. 23(1)
s. 22a(2)	amended by	s. 23(2)
s. 22a(3)		s. 23(3)
s. 22a(4)	amended by	s. 23(4)
s. 22a(5)	amended by	s. 23(5)
s. 22a(6)		s. 23(6)
s. 22a(7)	amended by	s. 23(7)
s. 22a(8)	amended by	s. 23(8)
s. 23	amended by	s. 24
s. 23a(1) repealed		
s. 23a(2)	amended by)	s. 25(1)
	amended by)	s. 25(4)
s. 23a(3)	amended by	s. 25(2)
		s. 25(3) new
		s. 25(5) new
s. 23a(5)		s. 25(6)
		s. 25(7) new
		s. 25(8) new
		s. 25(9) new
		s. 25(10) new
		s. 25(11) new
s. 23a(6)	amended by	s. 25(12)
		s. 25(13) new
s. 23a(7)	amended by	s. 25(14)
		s. 26(a) new
		s. 26(b) new
		s. 26(c) new
		s. 26(d) new
		s. 26(e) new
		s. 26(f) new
s. 24(1)	amended by	s. 27(1)
s. 24(2) repealed		

R.S.O. 1970, c.64 as amended up to 1975		R.S.O. 1980, c.66
		s. 27(2) new
s. 25(1)	amended by	s. 28(1)
s. 25(2)	amended by	s. 28(2)
s. 25(3)	amended by	s. 28(3)
		s. 28(4) new
		s. 28(5) new
		s. 28(6) repealed
s. 25(4)	amended by	s. 28(7)
s. 25(4a) repealed		
		s. 28(8) new
s. 25(5) repealed		
		s. 28(9) new
		s. 28(10) new
s. 25(7)	amended by	s. 28(11)
s. 25(8)	amended by	s. 28(12)
s. 25(9) repealed		
s. 25(10)	amended by	s. 28(13)
		s. 28(14) new
		s. 28(15) new
		s. 28(16) new
s. 25(11)	amended by	s. 28(17)
		s. 29(1) new
		s. 29(2) new
		s. 29(3) new
		s. 29(4) new
		s. 29(5) new
s. 26(1)	amended by	s. 30(1)
s. 26(2)	amended by	s. 30(2)
s. 26(3)	amended by	s. 30(3)
		s. 30(4) new
		s. 30(5) new
s. 27(1)	amended by	s. 31(1)
		s. 31(2) new
s. 27(2)	amended by	s. 31(3)
s. 27(2a)	amended by	s. 31(4)
s. 27(3)	amended by	s. 31(5)
s. 27(4)	amended by	s. 31(6)
s. 27(5)	amended by	s. 32(1)
s. 27(6) repealed		
		s. 32(2) new
s. 27(8)	amended by	s. 32(3)
s. 27(7)	amended by	s. 32(4)
		s. 32(5) new

R.S.O. 1970, c.64 as amended up to 1975		R.S.O. 1980, c.66
s. 27(a)	amended by	s. 32(6)
		s. 32(7) new
		s. 33 new
s. 28(1) repealed		
s. 28(2)		s. 34
		s. 35(1) new
		s. 35(2) new
		s. 35(3) new
s. 29	amended by	s. 35(4)
		s. 35(5) new
		s. 35(6) new
s. 30	amended by	s. 36
s. 31(1)	amended by	s. 37(1)
s. 31(2)	amended by	s. 37(2)
		s. 37(3) new
		s. 37(4) new
		s. 37(5) new
		s. 37(6) new
		s. 38(1) new
s. 32(1)	amended by	s. 38(2)
s. 32(1a)	amended by	s. 38(3)
		s. 38(4) new
		s. 38(5) new
		s. 38(6) new
s. 32(2)	amended by	s. 38(7)
s. 32(3)	amended by	s. 38(8)
		s. 38(9) new
s. 32(4)		
		s. 39 new
s. 33(1)	amended by	s. 40(1)
s. 33(2)	amended by	s. 40(2)
s. 34	amended by	s. 41
s. 35	amended by	s. 42
s. 36(1)	amended by	s. 43(1)
s. 36(2) repealed		
s. 36(3) repealed		
s. 36(4) repealed		

R.S.O. 1970, c.64 as amended up to 1975		R.S.O. 1980, c.66
s. 36(5) repealed		
		s. 43(2) new
		s. 43(3) new
		s. 43(4) new
		s. 43(5) new
		s. 43(6) new
		s. 43(7) new
s. 36(6)	amended by	s. 43(8)
s. 37(1)	amended by	s. 44(1)
s. 37(2)	amended by	s. 44(2)
s. 37(3)	amended by	s. 44(3)
s. 37(4)	amended by	s. 44(4)
s. 37(5)	amended by	s. 44(5)
s. 37(6)	amended by	s. 44(6)
s. 37(7)	amended by	s. 44(7)
s. 38(1)	amended by	s. 45(1)
s. 38(2)	amended by	s. 45(2)
s. 38(3)	amended by	s. 45(3)
s. 39(1)	amended by	s. 46
s. 39(2) repealed		
		s. 47(1) new
s. 40(1)	amended in)	s. 47(2)
s. 40(3)	part by)	
s. 40(1)	amended by	s. 47(3)
s. 40(2)&(3)	amended by	s. 48(1)
s. 40(2)	amended by	s. 48(2)
		s. 48(3) new
s. 41(1)	amended by	s. 49(1)
		s. 49(2) new
s. 41(2)	amended by	s. 49(3)
		s. 49(4) new
		s. 50(1) new
		s. 50(2) new
		s. 50(3) new
		s. 50(4) new
		s. 51 new
		ss. 52(1) to 52(21) new
s. 42(1)	amended by	s. 53(1)
s. 42(2)	amended by	s. 53(2)
s. 42(3)	amended by	s. 53(3)

R.S.O. 1970, c.64 as amended up to 1975			R.S.O. 1980, c.66
s. 43(1)	repealed		
s. 43(2)		amended by	s. 54(1)
s. 43(3)		amended by	s. 54(2)
s. 43(4)		amended by	s. 54(3)
s. 43(5)	repealed		
s. 44		amended by	s. 55
s. 45(1)		amended by	s. 56(1)
s. 45(2)		amended by	s. 56(2)
s. 45(3)		amended by	s. 56(3)
s. 45(4)	repealed		
s. 46(1)		amended by	s. 57(1)
s. 46(2)		amended by	s. 57(2)
			s. 57(3) new
			s. 57(4) new
			s. 57(5) new
			s. 57(6) new
s. 46(3)		amended by	s. 57(7)
s. 47(1)) s. 47(2))		amended by	s. 58
PART IV			PART IV
s. 89(1)		amended by	s. 89(1)
s. 89(2)		amended by	s. 89(2)
s. 90	repealed		
			s. 90 new
			s. 91 new
			s. 92 new
			s. 93 new
			s. 94 new
			s. 95 new

TABLE OF CONCORDANCE
FOR REGULATIONS

Regulation 83 as amended up to 1975		Regulation 96, 1980
		s. 1(1)(a) new
		s. 1(1)(b) new
s. 1(a)		s. 1(1)(c)
		s. 1(1)(d) new
s. 1(1)(c)		s. 1(1)(e)
s. 1(b)	amended by	s. 8(1)(a)
s. 1(d)	amended by	s. 16(1)(a)
s. 1(e)	amended by	s. 16(1)(b)
s. 2(1)	amended by	s. 6
s. 2(2)a		s. 8(4)
s. 2(2)b	revoked	
s. 3	amended by	s. 7
s. 4(1)	revoked	
s. 4(2)	amended by	s. 8(2)
s. 4(3)	amended by	s. 8(3)
s. 4a(1)	amended by	s. 9(1)
s. 4a(2)	amended by	s. 9(2)
s. 4a(3)	amended by	s. 9(3)
s. 4b(1)	amended by	s. 10(1)
s. 4b(2)	amended by	s. 10(2)
s. 4b(3)	amended by	s. 10(3)
		s. 10(4) new
		s. 10(5) new
s. 4b(4)	amended by	s. 10(6)
s. 4b(5)	amended by	s. 10(7)
s. 4b(6)	amended by	s. 10(8)
s. 4b(7)	amended by	s. 10(9)
s. 4b(8)	amended by	s. 10(10)
		s. 11(11) new
s. 11(a)		s. 16(2)
s. 11(b)		s. 17(a)
s. 11(c)		s. 17(b)
s. 12(a)		s. 18(a)
s. 12(b)		s. 18(b)
s. 13(1)1		s. 19(1)
s. 13(1)2		s. 19(2)

Regulation 83 as amended up to 1975		Regulation 96, 1980
s. 13(1)3		s. 19(3)
s. 13(1)4		s. 19(4)
s. 13(1)5		s. 19(5)
s. 13(1)6		s. 19(6)
s. 13(2) revoked		

See also Regulation 97 for 1980 particularly s.1 and s.2.

s. 14(1)	amended by	s. 20(1)
s. 14(2)	amended by	s. 20(2)
s. 15(1)	amended by	s. 21
s. 15(2) revoked		
s. 16 (see below)		
s. 17 (see below)		
s. 18 (see below)		
s. 23(a)		s. 22(a)
s. 23(b)		s. 22(b)
s. 23(c)	amended by	s. 22(c)
s. 24	amended by	s. 23
		s. 24 new
		s. 25 new
		s. 26 new
		s. 27 new
		s. 28 new

		Regulation 97, 1980
s. 16		s. 3
s. 17		s. 4
s. 18(1)	amended by	s. 5(1)
s. 18(2)	amended by	s. 5(2)
		s. 8 new

"...unless we provide better teams and better investigation, children are going to go on being abused and beaten and hurt and warped and that whole cycle of abuse is going to go on and on and on for decades because our present approach to child abuse is a stop-gap. It's a patch-type work."
- Dr. Robert Bates in testimony
October 18, 1978.

There was testimony that child abuse is not a new phenomenon. It has existed since ancient times. It is not a local or regional problem. It exists throughout the world although there may be many varying definitions of conduct which constitutes child abuse. Communities, societies, regions and nations may have varying tolerances in respect of the care and well-being of children. Treatment of a child which one may regard as being acceptable may be unacceptable in another.

Many of the witnesses who appeared upon the Inquiry were good enough to set forth recommendations which they felt might, if implemented, assist those working in the field of child welfare and, through them, the children and families whom they served. Some of those witnesses were well qualified by education, training and experience in particular fields, such as law, medicine and social work, which had directly affected Kim's life. Their recommendations were more broadly based than those of others who had less or other training, skills and experience and whose recommendations were based on their own personal experience in relation to cases of child abuse, which experience may have been limited to Kim's case alone.

The recommendations were many and varied. Some, from two or more witnesses, seemed to express much the same thought, but with differences of phrasing, sequence or emphasis. Some, from two or more witnesses, seemed to express conflicting opinions. It is not my intention to ascribe to any witness or source any recommendation set forth herein unless it can clearly be associated with that witness or source. If convenient, I will sometimes mention portions of testimony or documents which appear to me to be relevant to a recommendation I am about to write.

The recommendations I make have many bases. Some will reflect, in whole or in part, the view or opinion expressly stated by one witness. Some will reflect a composite of the views or opinions expressly stated by two or more witnesses, whether or not their views or opinions were entirely to the same effect. Some will reflect views or opinions which I felt were inherent, but not expressly stated, in the testimony of one or more of the witnesses. Some will reflect my own views and opinions based upon all of the testimony presented upon the Inquiry.

Throughout these recommendations there will be many references to the Ministry of Community and Social Services and the Minister of Community and Social Services. In the interests of brevity I shall usually call that Ministry the "Ministry" and that Minister the "Minister."

I have attempted to arrange the recommendations in a number of rather loosely related groupings based on subject matter or the person, official, institution or organization to whom or to which the recommendation is most pertinent.

RECOMMENDATION #1

A consistent theme throughout the testimony emphasized the need for co-operation to achieve the desired goal to protect children by preventing abuse or by reducing the number of incidents of abuse and successfully managing and treating those incidents which do occur.

While a recommendation may suggest that one person, authority, official, institution or organization be responsible for some particular action, it should be read as being addressed to all who are concerned about the protection and care of children. It should be read as suggesting that everyone co-operate to achieve the intention of the recommendation. It should be read as suggesting that appropriate steps be taken to obtain any legislative or regulatory action or amendment which may be required to achieve the intention of the recommendation.

Mr. Charko was one witness who spoke of the need for co-operation. He said there was a need for increased co-operation between the boards of directors of the children's aid societies and the Ministry. He recognized the right of each board of directors to act independently, but he suggested it should be willing to co-operate with the Ministry if to do so would lead to the provision of better service to the community.

It would seem to me that any responsible board of directors of a children's aid society would accept that as a general principle.

I would think too that responsible officials of the Ministry, including the Minister, would accept the converse, namely that the Ministry should be willing to co-operate with the board of directors of the local children's aid society if to do so would lead to the provision of better service to the community.

I would also expect that everyone else interested in the protection, care and welfare of children would accept the same principle.

The need for such co-operation is so basic and self-evident that it would not ordinarily require expression as a recommendation of the Report. But Kim's case was unusual. Other equally obvious things were ignored or neglected; so I propose the next recommendation simply as an expression of reaffirmation of the obvious so that, hopefully, it will remain obvious to everyone working to protect children from abuse.

1. *I RECOMMEND THAT all concerned with the protection, care and welfare of children approach their respective tasks and duties in a spirit of voluntary co-operation with one another and others so as to ensure the best possible service to children and families in each community.*

RECOMMENDATION #2

Throughout the recommendations both the word "abuse" and the expression "child abuse" are intended by me to have the broadest of meanings, unless in the context of the particular comment some limitation is indicated.

Section 47 of the present Child Welfare Act contains a definition of "abuse" which, to my mind, is unduly restrictive. It is limited to physical harm, sexual molestation and malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death.

The testimony upon the Inquiry satisfied me that abuse of children can be in many forms and of many degrees of gravity and it can have many results of varying degrees of gravity. It has many subtleties.

Kim suffered sexual molestation and physical harm which killed her. Dr. Bates expressed the suggestion that, had Kim survived those injuries, other harm resulting from them, harm that was not physical, might have been more serious and long-lasting than the physical harm.

He spoke of the cycle of abuse and one of its features whereby victims of abuse often in later life required detention in mental health facilities. There was reference to the difficulties which persons who were abused as children have in later life, particularly as parents.

The present legislation makes it an offence to inflict abuse, as defined in the Act, upon a child or to abandon or desert the child. It does not make it an offence to inflict other types of abuse upon a child. Even extreme neglect is not an offence unless it causes physical harm, malnutrition or mental ill-health to the degree set forth in the statutory definition of abuse.

Section 29 of the new legislation provides for examination of a child who has been found to be a child in need of protection to determine whether the child has suffered any of a list of impairments, namely, medical, emotional, developmental, psychological, educational or social. Psychiatric or mental ill-health would seem to be an appropriate addition thereto.

In my view to treat or neglect a child in such a way as to cause any such impairment or any other impairment should be stated to be abuse of the child.

Recognizing the great range of abuse in its many forms, its varying degrees of gravity and the variety of results that flow therefrom, it would seem to me that, once an instance of abuse has been established in a court, it will be for the court to determine what subsequent disposition of the case should follow. I would view the process to be similar to that of deciding upon the sentence or other disposition to follow a finding of guilt in a criminal matter. Each case will be unique and will require individual consideration of each of its elements and the sum of them.

2. I THEREFORE RECOMMEND that the Ministry seek amendment of the Child Welfare Act so as to provide that "abuse" includes a condition of impairment of a child whether it be medical, emotional, developmental, psychological, psychiatric, educational, social or other.

RECOMMENDATION #3

Only a supreme optimist might think that child abuse will be entirely eradicated in the forseeable future. Certainly it can be diminished. For that reason I wish to give prominence to a group of recommendations which are directed towards the prevention of abuse. Other related recommendations are directed towards the detection of abuse when it has occurred and then the management of cases arising therefrom and the treatment of children and families involved therein.

Prevention of child abuse was a part of several of the recommendations or suggestions made by witnesses. Some stressed prevention as being the most important aspect of their proposals. They said prevention of abuse and efforts to prevent abuse presented the greatest hope for achieving the greatest benefit for the greatest number of people, children and families alike, with a smaller expenditure of money and human resources than would be required if other methods were employed to try to deal with the problem.

While witnesses used the word "prevention" I was and am satisfied that they felt that child abuse will not likely be entirely eliminated. When witnesses spoke of prevention their thoughts appeared to me to be directed towards the prevention of some incidents of abuse and the control or limitation of abuse in a general sense.

Abuse may not be prevented in the sense that no child will be abused. But the number of children who will be abused can be reduced and the severity of their abuse can be lessened. Those who think in terms of eradication should be encouraged. Even though their goal is not attained every step towards it improves the lot of children in our communities.

It must not escape notice that any recommendation seeking prevention or limitation of abuse of children is not novel. Recommendations to similar effect have been made in some of the general literature upon the subject. More importantly such recommendations have been made in reports resulting from studies commissioned by or on behalf of the

Ministry. It was the Minister then responsible for that Ministry who ordered that this Inquiry be conducted. It is the present Minister to whom this Report will be delivered. It is he who must then consider it and bear a large part of the burden of implementing the recommendations set forth herein.

A sense of frustration must have been engendered in the authors of such earlier reports when, years after making their reports, they read or heard news reports upon this Inquiry indicating that witnesses were still asking for the establishment and operation of such programmes and were suggesting that little, if anything, had been done to implement the recommendations of the earlier reports.

The tenor of the testimony upon the Inquiry leads me to believe that any response to or recognition of such earlier recommendations had, in the view of many of the witnesses, been insufficient and lacking in effectiveness, if indeed there had been any response or recognition at all. It would be unfortunate if my restatement of earlier and other recommendations, perhaps with some variation thereof in the light of Kim's case, should go unheeded.

I think it would be a very worthwhile exercise for the present Minister to take upon himself a study to ascertain what, if anything, has really been done, as opposed to talked about, by the Ministry to establish or encourage such programmes as a result of the testimony upon the Inquiry, including the many references to earlier reports and studies. The Minister might also care to review the testimony of officials of the Ministry as to what the Ministry was planning or even had implemented so as to satisfy himself as to whether anything so planned has been begun, if not, why not and, if begun, has been maintained and if not, why not.

As an extension of that it might be of interest, and perhaps of surprise, to the Minister were he to establish and maintain a programme to be operated by his personal staff as distinguished from the staff of the Ministry who ordinarily deal with the children's aid societies. That programme should invite frank comment from the children's aid societies, through the board of directors and local directors, upon the performance or delivery of child welfare services by the Ministry. It should invite suggestions for improvement, extension, reduction or other changes.

I am not approaching this as a means to assess one employee's work, but rather the over-all function and philosophy of the Ministry as they are perceived by the societies.

I make that suggestion to the Minister because of testimony in relation to correspondence written by one of his predecessors in office. It was said that the particular correspondence was not prepared as part of the Ministry's correspondence and thus it was not open to explanation or interpretation by staff of the Ministry. That would suggest that, at least in the term of that predecessor in office, there was some lack of communication or even of understanding within the Ministry and between the Minister and the staff of the Ministry.

I write that in the full knowledge that the Ministry was represented by counsel throughout the Inquiry and that other professional staff of the Ministry testified upon the Inquiry and were interested in its proceedings and were observers thereof from time to time. They must have been impressed by the need for attention to many of the matters mentioned in earlier reports and in the testimony upon this Inquiry. The testimony as to the Ministry's response to the Garber Report would tend to establish that.

When I write of the Minister's inquiring as to what has really been done, I am ever drawn to the words of Petronius and their application to what had occurred in the Ministry on earlier occasions. I would hope that the present Minister will be able to differentiate between concrete or real action or development and actions or words which demonstrate the application of Petronius' comment.

Petronius' comment is set out in the main portion of this Report, but, for the benefit of those who may read only this Chapter of the Report, it is appropriate that it be repeated here. That comment was:

> "We trained hard, but every time we were beginning to form up into teams we would be re-organized and I was to learn later in life that we tend to meet any new situation by re-organizing and a wonderful method it can be for creating the illusion of progress while producing inefficiency and demoralization."

I accept and endorse Dr. Bates' statement that our children are our most precious commodity. Some, such as Kim, have not received the care and protection that they should have. In the spring of 1978, Mr. Zwerver could not assure the Board of Directors of the Society that there were not other instances where children had not been or were not being well served by the Society.

Dr. Bates is so clearly a person who, not only because of his professional knowledge, skill and experience as a physician and paediatrician, is concerned about the welfare of persons in our society and particularly the children. His sincerity in his beliefs and opinions made his testimony an effective plea on behalf of children.

Like other witnesses Dr. Bates spoke of various aspects of the problem of child abuse including some of the matters to which workers in the field should be alert. He spoke of the continuum of child abuse, a progression in some instances from a beginning of failure to thrive to an incident of bruising or a broken arm to, perhaps, death.

Dr. Bates expressed doubt that "child abuse is a one shot thing." He felt that, apart from a situation of acute crisis in the home, abuse arose from a problem of some long standing and occurred when a crisis existed. In some instances the abused child was the crisis.

What Dr. Bates spoke of was inherent in what Dr. Singh wrote about Kim in March, 1975 when she was first in hospital as a result of the fracture of her left arm. After describing that injury as "extremely unusual" in the circumstances described by Jennifer Popen and after stating his suspicion of the presence of the battered child syndrome, Dr. Singh wrote,

> "...if we do not protect this child at the present stage, she might end up with a fractured skull or some other fractures later on in her life."

Dr. Bates also spoke of the cycle of child abuse. Others did not use that expression, but clearly all had observed or learned of what Dr. Bates described. He spoke of instances where persons who had been abused in childhood became abusing parents. He said that not every abused child becomes an abusing parent. Other factors are involved. He did say

> "...every parent who batters has been abused as a child and I'm sure that a lot of the inmates in Penetang [Mental Health Centre, Penetanguishene], perhaps the majority of them have been abused as a child. This is what Dr. Elliot Barker feels from that centre."

Dr. Bates testified that it was necessary to break that cycle. He felt it could be achieved by prevention programmes. He envisioned a broad range of programmes which might be so categorized. In many instances as he suggested such a programme he related some incident in Kim's life to illustrate the need for the particular programme.

Dr. Bates made it clear that he recognized that the rate of success of any such programmes may be small in the sense of curing those who abuse children. But he felt the programmes could reduce child abuse in its several forms.

Dr. Bates, like others, emphasized the need for such preventive programmes to be devised and operated by teams of workers representing various disciplines, professions, institutions and agencies within the various communities. Some whom he mentioned as being able to contribute to the success of any such programmes were children's aid societies, police forces, hospitals, medical personnel, school teachers, day care workers, public health nurses, churches, those who instruct courses in preparation for marriage and groups such as Parents Anonymous. I am sure there are many others whom he could have mentioned.

Dr. Bates spoke of various factors which, if present in a child's home, might enable a trained and skilled observer to determine that that child might be what Dr. Bates called a high-risk child. He felt that from such a determination it might be predicted that that child is likely to be abused unless appropriate action is taken to prevent that happening.

Dr. Bates testified that the presence of such factors could be determined only by careful and thorough investigation of the parents and the child, their history, their health, their marriage and their background. Some investigation would require professional assessment of the parents and the child by psychiatrists and psychologists.

Mrs. Harvey, Mr. Lovatt and Mr. Carter testified as to the need for such preventive programmes.

Mrs. Harvey expressed her recommendation that preventive services be given priority. She spoke of the co-ordination of such services in the community. She felt that the Ministry should give leadership.

At the beginning of this Chapter I set forth an excerpt from Dr. Bates' testimony on October 18, 1978. Earlier, on August 17, 1978, Mrs. Harvey, speaking of the need for leadership by the Ministry, used words not unlike those of Dr. Bates, when she said that children's aid societies have to give too much of a band-aid type of service.

Mr. Lovatt in his testimony expressed agreement with a statement in the Report on Selected Issues and Relationships prepared by The Task Force on Community and Social Services, the Hanson Report of January, 1974. That statement was to the effect that The Child Welfare Act gave to children's aid societies a mandate to develop preventive services and that the mandate had been fulfilled in varying degrees. He agreed with the further statement that the trend to that fulfilment should be strongly reinforced.

Mr. Carter in his testimony expressed the hope that "the government", by which, I presume he meant the Ministry, "would acknowledge and provide for prevention services." He said that little was spent on prevention, including improvement of resources within the communities, such as development of multi-disciplinary teams.

The rationale of such testimony and recommendations seems to me to be at least similar to that of the twentieth and twenty-first recommendations set forth in the Garber Report. Those recommendations were to the effect that the curricula for the training of persons for careers in various professions include appropriate training in child abuse to enable the practitioners to be aware of child abuse indicators, assessment methods and referral strategies. The recommendations also were to the effect that the Ministry provide training for child abuse personnel.

The concept of the importance of prevention as a tool to combat the incidence of child abuse is not unique to knowledgeable persons in Ontario. In the fourth edition of their work entitled The Maltreated Child, published in 1979, Doctors Fontana and Besharov wrote of many of the matters described by Dr. Bates.

They wrote of delivery of appropriate child care "especially in dealing with the prenatal and postnatal care of 'high risk' matters." That observation would appear to be applicable to Kim's case and particularly the days of her lifetime after the birth of Karie. No one who should have been aware of the possibility of postnatal problems recorded any concern for the effect that Karie's birth might have had upon Kim's care, apart from some minor consideration of the time when she should be returned to her parents. Only after her death did anyone write of the possibility of post-partum depression as possibly being a factor in Kim's case. That was not written by anyone within the Society or in any way involved in Kim's care during her lifetime.

Doctors Fontana and Besharov wrote of inadequate medical preventive services. It would seem that expression would apply to Kim's case if indeed there were any, let alone adequate, medical preventive services in relation to Kim.

Doctors Fontana and Besharov wrote of the need to develop child abuse preventive programmes for the high risk population. That would appear to be the same group whom Dr. Bates described as high risk children. As Dr. Bates testified, they wrote of encouraging parents to participate in preventive programmes and of providing support to parents. As Dr. Bates testified, they wrote of means of identifying high risk categories of children.

In summary they wrote:

> "Prevention is a community responsibility and one of the most effective means of alleviating child abuse in this country. Education, particularly for parents, will reduce the massive alienation of parents and children which causes family crisis, breakdown, intrafamilial violence and subsequent child abuse."

Upon the testimony it was apparent to me that, as in Kim's case, because of its very nature, child abuse is usually committed in private, without witnesses, upon victims who, because of age or relationships to their abusers, are unable or unwilling to complain.

It was equally apparent to me that the complete eradication of child abuse was Utopian, but not practically attainable. Nonetheless those who strive for Utopia should be encouraged. We should be able at least to approach that goal.

With full recognition of any such limitation which may exist, my next recommendation reflects the testimony and literature above mentioned. I believe it to be the most important of all of the recommendations in this Report. Some of the subsequent recommendations are intended to expand upon the basis of this recommendation and to supplement it.

3. *I RECOMMEND THAT the Ministry and children's aid societies devise, establish, maintain and operate continuing programmes and services to prevent or reduce the incidence of child abuse in*

Ontario. The Ministry should maintain an ongoing assessment of such programmes and services to ensure that they reflect the best of current professional opinion and practice. The Ministry should not act in isolation, but should secure the co-operation, assistance and advice of other Ministries of Government and of children's aid societies, professional associations, institutions and agencies such as police, hospitals, physicians, public health nurses, schools and social workers, and of knowledgeable and interested persons such as Dr. Bates and others who offered to serve the Ministry in the best interests of children. Local children's aid societies should build upon the Ministry's programmes to operate local programmes to the same end adapted to accommodate local conditions.

RECOMMENDATION #4

There was some testimony to suggest that some people associated with children's aid societies felt that the Ministry's criteria for approval of estimates of expenditures did not adequately recognize the value of preventive programmes. The suggestion seemed to be that expenditures in respect of children in care were more likely to be regarded as a basis for assessing the need of the children's aid society.

I am aware of the provisions of subsection 2 of section 8 of The Child Welfare Act as it was and subsection 2 of section 4 of Regulation 86 made thereunder. They provided that where a children's aid society had jurisdiction in more than one municipality the amount each municipality was required to provide to the society to meet its estimated expenditures was determined on the basis of the "proportion that the number of children taken into protective care in the municipality bears to the total number of children in care of the society."

The present legislation and regulations contain quite similar provisions in respect of the cost of services for children in care. Other costs are borne on the basis of total population.

Even apart from the change of the legislation I am not satisfied that there was any basis for the suggestion mentioned in the first paragraph of this comment. I am not satisfied that the belief on which the suggestion was based was widely held. However, lest there be any basis for the suggestion or lest the belief be widely held, I believe the Ministry should allay the concern.

I have expressed my belief that preventive programmes are valuable and should be encouraged. That will require funds. Funds so spent will, hopefully, reduce the sums spent upon children in the care of the children's aid societies.

4. *I RECOMMEND THAT the Ministry, clearly in writing and by its actions in considering the estimated expenditures of children's aid societies, affirm*

its support of programmes by children's aid societies intended to seek to prevent or reduce the number of incidents of child abuse or the risk thereof. It should be made clear that during consideration of any proposed expenditures submitted to the Ministry by a children's aid society for approval pursuant to the Child Welfare Act proposed expenditures upon preventive programmes will be regarded as being of great importance.

RECOMMENDATION #5

From several witnesses and from literature referred to upon the Inquiry I heard or read of the great need for awareness of the real presence of child abuse in Canadian society and communities. It was clear to me that it is a world-wide phenomenom recognized and identified to varying degrees everywhere. Canada is by no means unique.

Canada may very well be ahead of many other countries in its acknowledgement of the existence of abuse, in its efforts to identify and recognize it when it occurs and in efforts to limit or reduce its incidence. For example, Canadian communities may very well have a tolerance for disciplinary treatment of children which establishes as an incident of abuse treatment less harsh than would be required to be viewed as an incident of abuse in some other countries. That level of tolerance may very well vary from community to community within Canada, even within Ontario or even within municipalities.

We can take no smug satisfaction in all of that. Any smugness we may feel will be removed by seeing the photographs of Kim's dead body and her horrible injuries and by recalling that, even when she saw that body and those injuries, Mrs. Lo, classified as a Social Worker Class I with the Society, was able, two years after Kim's death, to testify that Jennifer Popen's story about Kim's fall from a high chair might have been true.

From the testimony upon the Inquiry I am satisfied that, even among persons who are employed in positions which bring them into contact with incidents of abuse, there is less than a satisfactory awareness of abuse, its manifestations and its subtleties. Mrs. Lo and Mr. Khattab come quickly to mind as the extreme examples. Others, even some of those as apparently well trained and experienced as Mrs. Harvey appeared to be, are not exempt from the same sort of comment.

It became apparent to me that steps must be taken to inform the public generally of the insidious presence of child abuse in our communities. Members of particular groups whose professional careers or callings may impose upon them particular responsibilities require special training and knowledge to meet their obligations. Physicians, teachers, public health nurses, hospital personnel, police officers and social workers come readily to my mind as examples of such special groups. No doubt there are others.

We all must be aware that some adults do abuse children. We must be aware that the range of abuse is great. It may be a form of discipline not far beyond limits which we regard as being acceptable. It may be the infliction of the most horrible and fiendish of injuries which may lead to permanent disability or death.

Kim's injuries killed her. No one can venture to say what might have become of her had she survived. Even if she did not bear any physical scars, she may have suffered irreparable emotional damage. In any event the result might have been the continuation by her of the cycle of abuse. No one can say where or when the cycle would end.

Dr. Turner spoke and others have written of the "madonna syndrome." I understand that to mean that many of us cannot contemplate that any woman who has borne a child can ever abuse that child. I understand it to mean that we picture every mother of a child as an ideal parent to that child, full of love and compassion for her child, calm, long-suffering, slow to anger, understanding of childish behaviour and forgiving of wrongdoing or error by her child.

The testimony of Dr. Turner and others upon the Inquiry has satisfied me that, whether or not any mother fully meets those high standards, there are mothers who do not meet them. One cannot assume, without some examination or consideration of the family, that any mother is so saintly. Mr. Khattab made that sort of erroneous assumption about Jennifer Popen in March, 1975.

Dr. Turner did not use any corresponding term to speak of fatherly love for children. I would assume that if there were any corresponding syndrome leading to an assumption that a father cannot abuse his children it would be subject to similar limitations and provisos.

Having heard the testimony and having seen the picture slides and photographs of Kim and other children presented upon the Inquiry, I am satisfied that some parents are capable of inflicting terrible injuries upon their children.

By reasons of the circumstances which led to this Inquiry, its main thrust was toward abuse of a child by the child's parents or one of them. There was no credible testimony that anyone other than Kim's parents or one of them abused Kim. Nonetheless, from the general testimony of qualified persons and from reading literature referred to upon the Inquiry, I am satisfied that abuse of children is not inflicted only by their parents. A child may be abused by another member of the family, by a friend of the family, by a neighbour, by an older child, by an acquaintance, by a stranger, and, indeed, by anyone whether adult or child.

We as responsible citizens and members of our own communities cannot assume that every infant, apparently so loved and so lovable, will forever be loved and lovable and free of abuse.

Dr. Bates' testimony described the myriad of circumstances that might lead to any child becoming a victim of abuse. While the testimony set forth a wide variety of such circumstances I am sure there would be at least as many more combinations of circumstances had Dr. Bates sought to set forth all possible causes of abuse.

We must recognize that children may be abused by parents who profess or appear to be loving parents. We must recognize that not every child is wanted by his or her parents. We must recognize that not every child who is wanted is wanted by his or her parents for the right reasons. We must recognize that some children, for a variety of reasons, are more likely than others to be victims of abuse.

The result of this is that there must be great effort expended to create the necessary awareness. That will require programmes to make members of the public generally aware that abuse of children does occur in our communities.

It must be shown that abuse can result in a wide range of injuries even death.

It must be shown that physical injury is not the sole result of abuse and that emotional or other damage may have greater effect upon the lives of abused children and their progeny.

It must be shown that abuse is a self-perpetuating phenomenom in that abused children are prone to become abusive parents or inmates of institutions for the criminally insane.

It must be shown that abuse imposes tremendous burdens upon the human and financial resources of our communities.

Upon the testimony it would seem that we tend to believe that abuse cannot or does not happen in our own communities and neighbourhoods. It seems that only cases which receive extensive public attention because of their particular circumstances arouse public concern. Kim's was one such case. Others were mentioned during the Inquiry.

5. *I RECOMMEND THAT the Ministry and the children's aid societies devise, establish, maintain and operate continuing programmes to inform the public generally of the presence of child abuse in Ontario and in our communities and to seek the assistance of members of the public in efforts to reduce or eliminate the incidence of abuse. Such programmes should emphasize that, even apart from statutory duty, we, as members of the public, owe it to our children and to ourselves to report our cares and concerns for the safety and well-being of our children and thus of our whole community.*

RECOMMENDATION #6

There was testimony which suggested that members of the public generally did not evince great interest in the day-to-day affairs of the Society. I would hope that, with a programme such as I recommend to inform the public about child abuse generally and in the community in particular, more members of the public will become actively interested in the affairs of children's aid societies. That interest can then be developed so as to obtain the services of more persons as members of the societies, as members of boards of directors and committees of the societies, as volunteer workers with the societies and generally as supporters of the objects, purposes and efforts of the societies.

The lack of public concern or interest in or knowledge of the affairs of the Society was perhaps illustrated by the attendance of few members of the public at the hearings conducted by the Inquiry and by the attendance of Mr. Sharen as the only member of the public who came forward to testify as to the good work done by the Society. Even he was not a typical member of the public because he was the head of a local municipal council.

Mrs. Maughan supported the concept of preventive programmes in preference to programmes to deal with abuse after it has occurred. She spoke of the need for and benefit derived from the existence of organizations in each community to which parents might turn for support or advice. She seemed to envisage organizations in addition to children's aid societies. She mentioned in particular one with the name Parents Anonymous.

From the testimony upon the Inquiry I am satisfied that child abuse occurs in some form and to some extent everywhere. It is not peculiar to any group whether that group be based on race, creed, education, wealth, poverty, profession, trade or calling, position in the community or any other single factor or groups of factors. Thus I am receptive to any suggested improvement of the community's facilities to deal with the problem.

I view a supportive group in a community as being such an improvement. The form which any such group might take will depend upon the nature of the community and the residents.

Dr. Bates had had some personal involvement with Parents Anonymous. He felt it could be a helpful force, but he recognized its limitations. He said that it was a resource which should be strengthened and developed so as to be available to persons who were abusive parents. He recognized that it might be helpful to only a small percentage of such parents because the programme of Parents Anonymous would require a substantial motivation on the part of those participating in it. Its programme includes group discussions about what has happened to participants. Dr. Bates felt that only those who truly sought help would become involved. He felt that the programme appealed only to particular strata of the community and was not as widely based as the counterpart in the United States of America, but that it could be enlarged.

In summary Dr. Bates' view was that Parents Anonymous, while useful, was not the answer to the problem of abuse. He expressed the belief that strengthened and improved children's aid societies were the primary community resource to combat abuse.

I accept Dr. Bates' view as correct. I would enlarge upon it to note that the children's aid societies have local responsibilities with reference to child abuse because of the duties cast upon them by The Child Welfare Act. In practice the local children's aid societies are extensions of the Ministry which has province-wide duties and obligations and powers to oversee the operations of the children's aid societies as well as the power of the purse inherent in the budgetary controls imposed by the Ministry upon the children's aid societies and its very significant participation in their financial affairs.

Elsewhere I write of the opinion that calls for the creation of multi-disciplinary teams in each community to deal with instances of abuse. A desirable extension of that would be that the formation and operation of other supportive groups in the community be encouraged by the local children's aid society and by the Ministry. Any such supportive group should be just that, supportive of parents and families and of the children's aid society and the Ministry. It should not be viewed as a substitute for the strong involvement of the children's aid society and of the Ministry in child abuse programmes as part of their general roles to protect children.

One type of supportive activity mentioned in the literature is the establishment of so-called telephone "hot-lines" or "lifelines." These are intended to enable a parent, in a state of crisis or distress which might lead to an incident of abuse, to have an opportunity to talk to someone immediately and thus, hopefully, to forestall the abuse.

Dr. Fontana and Dr. Besharov in their work, The Maltreated Child, suggest that use of such a telephone line might enable a parent with a particular concern or problem to obtain referral to other resources available in the community. They suggest that while volunteers without professional qualifications or training might answer such telephones, administration thereof should be by professionally qualified persons able to provide information of immediate help.

Upon the Inquiry there was testimony as to the value of the contribution of volunteers to the function of the Society. Mrs. Mitchell expressed some concern as to the care which was required to ensure the proper utilization of volunteers. Mrs. Hoad was one such volunteer who performed one specific service in relation to Kim. I have written of my high opinion of the activity of Mrs. Maughan, a volunteer with the Probation Services of The Ministry of Correctional Services, in relation to Kim's case.

In my opinion the establishment of such telephone lines under the aegis of the local children's aid society, manned primarily by volunteers, but with the advice of the local children's aid society's professional staff immediately available if required, should be encouraged and supported by the children's aid societies and the Ministry.

In expressing that opinion it is my assumption and intention that any volunteer will receive training and instruction which, in addition to informing him or her of how to perform the duties, will enable him or her to recognize the limitations of the service and the need to call upon the professional personnel immediately available.

I am satisfied that volunteers can serve a useful function in the day-to-day operations of children aid societies. The value of volunteers was mentioned in testimony upon the Inquiry. It is mentioned in literature upon the subject.

It was stated by witnesses upon the Inquiry that care was required in the use of volunteers to achieve the greatest benefit and to ensure that their activities are suitably integrated with those of the regular employees of the children's aid societies.

Witnesses spoke of the need for care in the selection and training of social workers whose duties would relate to child abuse. They spoke too of the demanding nature of such employment and the desirability that social workers be relieved of those duties from time to time. The same remarks would appear to be applicable to the selection, training and employment of volunteers who might be expected to be involved in child abuse matters.

Dr. Turner in commenting upon Mrs. Lo's involvement in Kim's case expressed concern that Mrs. Lo, untrained and inexperienced, had such a heavy responsibility for Kim. Even in saying that he spoke of there being a use for persons such as Mrs. Lo in the function of children's aid societies. I presume he meant even in the most difficult of cases. He spoke, for example, of the friendly visitor and the possible benefit to be provided therefrom.

I envisage the use of volunteers to include duties such as those of a friendly visitor, or older brother or sister, or parent or grandparent, someone to whom a harried parent can turn frequently and informally for support, encouragement, assurance, advice, comfort or whatever.

I envisage members of such teams of volunteers attending meetings of the intra-society team of professional social workers at which cases in which volunteers are involved are discussed. Only if a volunteer is aware of the details of a case in which he or she is assisting will that volunteer be able to be most helpful. To that end volunteers should be required to accept provisions relating to the confidentiality of information disclosed to or acquired by them. Those provisions should correspond to the provisions of confidentiality now accepted by or applicable to social workers employed by children's aid societies.

The training of the members of such teams of volunteers should contain elements relating generally to the prevention, detection, investigation and management and treatment of cases of abuse, but with emphasis upon what is expected of the volunteers. The volunteers should be trained to write reports upon their activities with perhaps greater detail than might be expected in a report written by a trained social worker who may be better able to assess what has been observed and thus to omit inconsequential details.

Mrs. Mitchell spoke of the role of volunteers with the Society. Her experience led her to say that volunters should not be used only for trivial chores or to assist in short-term difficulties. She said the use of volunteers should follow a plan and should make optimum use of the volunteers' skills acquired in their own professional, business, academic or social careers. She recognized the limitations of what volunteers can do and she recognized their need for advice and direction, encouragement and support in what they did. Her comments were reasonable and practical. Volunteers must derive some sense of satisfaction from what they do. In that way too they will be of more use and benefit to the children's aid society and to the community.

Drs. Fontana and Besharov in their work, The Maltreated Child, write of the important contribution of volunteers in the field of child welfare. They state that more recently volunteers have assisted in child abuse prevention and treatment efforts, including inter-disciplinary approaches. They set forth some of the basic qualities or attributes which should be possessed by volunteers.

As I have noted elsewhere in the Report I was concerned that there appeared to be no legislative authority in 1975 and 1976 for the employment of Mrs. Maughan as a volunteer with the Probation

Services. Lest there be concern as to the duties, rights, powers and liabilities of volunteers with the children's aid societies, at least in relation to some functions, the Child Welfare Act should contain specific authorization for the societies' appointment and use of volunteers. It may prevent litigation questioning the authority of a volunteer or seeking damages, as for trespass, against a volunteer accompanying an employee of a society.

The Child Welfare Act in force during Kim's lifetime did not deal specifically with the appointment and use of volunteers by children's aid societies. Section 4 of that statute did empower the board of directors of a society to designate persons who, when so designated, would have the powers of a constable and school attendance officer and would be deemed to be an officer within the meaning of section 10 of The Public Authorities Protection Act. Section 21 provided that a constable or "a person authorized by the Director or by a local director," having reasonable and proper grounds to believe a child was apparently in need of protection, might apprehend the child and might enter premises for that purpose. Section 22a permitted the local director or Director to appoint homemakers.

Those provisions would appear to have permitted the designation or appointment of volunteers, but at the same time they did not, to my mind, address the problems which will surround the use of volunteers in a wide variety of roles in addition to those of constable and homemaker and in relation to the apprehension of any child apparently in need of protection.

The present Child Welfare Act contains similar provisions in sections 4, 21 and 23.

In my view the statute or regulations thereunder should specifically provide for the appointment and use of volunteers and for the protection from liability of any volunteer acting in good faith under the instruction of a social worker of a children's aid society. Conversely the statute or regulations should require volunteers to comply with standards of conduct and ethics, including respect for confidentiality of information to which the volunteers may become privy in the course of their service.

I note that Part III of Ontario Regulation 96 made under the present Child Welfare Act sets qualifications only for those who, if social work is treated as a profession, will be the professional staff of the children's aid societies. In my view the Regulation should set forth the requirement that one who is to serve as a volunteer in certain facets of social work in relation to child welfare must have certain qualifications of aptitude and training. As in the present Regulation there may be several categories, but those who are to work in some areas, such as abuse, must be the elite of the volunteer corps.

6. *I RECOMMEND THAT children's aid societies be encouraged to devise, develop, maintain and use programmes for the productive and fulfilling engagement of volunteers and supportive groups in the community in the various functions of the societies, including functions in relation to child abuse generally and in relation to specific instances of abuse. Teams of volunteers especially selected and trained may assist in child abuse matters. In the same way that social workers should not be required to work in the area of child abuse for lengthy periods of time, volunteers should serve on child abuse cases for relatively short periods of time although I recognize that in some instances the exigencies of a case may make it necessary or desirable for a volunteer to be involved in it for an unusual length of time. The Ministry should be prominent in such encouragement and should seek whatever amendment of legislation or regulations may be necessary to authorize and regulate the use of volunteers in any way, including those I have mentioned in the preamble to this recommendation.*

RECOMMENDATION #7

One means of participation by the public generally in the affairs of a children's aid society is membership in the society, perhaps leading to service upon the board of directors and committees of the society or as a volunteer or otherwise.

Any programme to inform the public of the function of a children's aid society should contain information about the corporate organization of the society and the opportunities for service to the community through membership in the society and service upon its board of directors and committees and otherwise.

There was testimony as to the composition of the Board of Directors of the Society. Some of it was critical. No one suggested that the criticism expressed would apply only to the Society and not to other children's aid societies.

Mrs. Wood was perhaps one of the witnesses voicing most concern in that area, but she was not alone.

As I understood one thrust of the criticism it was that the Board of Directors tended to be "self-perpetuating" and was not sufficiently representative of the community. But there was other criticism that the members of municipal councils appointed by and from those municipal councils were changed too frequently to enable or permit them to gain a firm grasp of their new responsibilities. It was said they tended to be concerned primarily with expenditure of money as distinct from the quality or extent of the services provided. The municipal council members were not entirely alone in that. Mr. Higgins too said he felt a responsibility to be a "watch-dog" of the public purse.

One suggestion for improvement of the composition of the board of directors of any children's aid society was that social workers, even those so employed by the society, should be elected or appointed to the boards.

I have severe reservations about that suggestion, particularly the portion relating to social workers employed by the society. I am satisfied that a person trained and experienced as a social worker, particularly in the area of child welfare and family services, could be a valuable and contributing member of the board of directors of a society. But, if employed by the society, he or she can make the same contribution to the society, particularly if there are good means of communication within the society, and still leave room for another person, perhaps one equally trained and experienced, but no longer practicing, to join the board. In that latter way the society benefits. I would think too that the presence of employees upon the board of directors of a society would lead to problems or possibilities of conflict of interest, particularly in personnel matters.

In my view the present legislation regulating the composition of the boards of directors of children's aid societies is quite adequate, subject to a reservation as to who may be appointed by municipal councils. Any deficiencies or weaknesses in the board of directors of a particular children's aid society must result from local conditions. Correction or removal of any deficiency or weakness is a local responsibility. The Ministry in its supervisory and inspectorial role should recognize any such problem and assist the society in relation to it. Such correction may be a natural result of the public's greater awareness of and interest in the affairs of the society after a programme of public information about the society has been under way for some time.

Based on Mr. Higgins' response to Mrs. Harvey's inquiry as to his willingness to serve on the Board of Directors of the Society and upon his testimony upon the Inquiry, together with the testimony of other members of that Board of Directors and the testimony as to the volunteers who serve the Society and other bodies, I am satisfied that there are public spirited citizens in the City of Sarnia, the County of Lambton and, by my own extension, elsewhere in the Province of Ontario who would be willing to become and be active members of the boards of directors and committees of children's aid societies. They are citizens who are interested in serving to improve their communities and who have the ability to be effective.

It may very well be that such citizens have not made a decision as to the direction they will take in such efforts or service. Mr. Higgins had served in other organizations. Mr. Lovatt was involved in a number of activities beyond his duties as Local Director of the Society. Mr. McPhedran had served on the board of directors of another children's aid society. Mrs. Wood had involvement with another community-service organization. Mr. Wryzykowski had wide involvement in the community. Mrs. Maughan was a volunteer with the Probation Service of The Ministry of Correctional Services. Mrs. Hoad was a volunteer with the Society.

There are numerous interests toward which the willingness of public spirited citizens to serve can be directed. The specific interests of each children's aid society is one such interest. It is the responsibility of each children's aid society to let the community it serves know what those interests are and how members of the community can assist. The Ministry should assist the societies in these efforts.

In my view the Board of Directors of the Society was not self-perpetuating. In one sense it was almost self-destructive in that in many instances persons who served as President did not remain as members of the Board of Directors after their terms as President. There was certainly a frequent change of most of the members appointed by the municipal councils.

The Society provided many benefits to the community it served. I would doubt that any significant number of people in the community were aware of what the Society did or sought to do and of what problems and difficulties the Society encountered in its efforts. I have already mentioned Mr. Sharen's solitary attendance to testify as to good service by the Society to the community.

The very nature of some of the services provided by children's aid societies and the need for confidentiality militate against some forms of public relations or information programmes being undertaken by the societies. But there are many opportunities remaining. Mr. Lovatt apparently used his association with other organizations as a means of informing them generally about the Society and its activities. Mrs. Mitchell certainly did much the same as she recruited volunteers to assist the Society.

If some of the other recommendations of this Report are implemented other avenues of approach to the public will be opened. A programme to prevent child abuse requires, in part at least, that the public be aware of the problem in general and of its presence in the community in particular. The public must be made aware of how they may help in the aims and purposes of such a programme.

There are probably many other areas of service by the children's aid societies which would benefit from programmes being undertaken by the local societies to inform the public of such areas of service and, if appropriate, of ways in which members of the public can assist in the delivery of that service.

It may very well be that some of the societies are unable to establish and maintain information services on their own. They should be assisted by the Ministry and the Ontario Association of Children's Aid Societies who should be able to provide to each children's aid society material which, if necessary, can be adapted to local use.

In my comments upon the need for a programme to prevent child abuse I make some suggestion as to how the public might be informed and kept informed. Those suggestions would apply equally to any programme to publicize generally the services and needs of each children's aid society. There are countless other means available.

Members of local clubs, associations and institutions might be sought out as members of the board of directors and committees of the society because of some similarity of the interests of the society and those of the other clubs, associations or institutions. Municipal councils have representation on the board of directors of each society. That is by legislation. There is no reason why boards of education should not be represented. The same can be said of church oriented groups, such as ministerial or inter-church associations, and of service clubs, philanthropic or benevolent societies and organizations especially interested in children.

In my comments upon the desirability of aspirants for election or appointment to the board of directors of a children's aid society, which appear elsewhere in this Chapter, I do not exempt those to be appointed by municipal councils. They too should know what is involved in service upon the board.

There was no testimony directly upon the point, but I see no particular reason for the statutory provision that those to be appointed as members of the board of directors of a children's aid society by a municipal council must be members of that municipal council. That appears to me to be unduly restrictive and perhaps not in the best interests of either the children's aid society or the municipal council.

If no member of a municipal council is particularly interested in the affairs of the children's aid society it seems to me to be counter-productive to appoint some one of them simply because the legislation requires it. There was an abundance of testimony as to the difficulties in maintaining the attendance and active interest of persons who voluntarily or willingly accepted membership upon the Board of Directors of the Society. I would imagine that if anyone were virtually dragooned or conscripted to be on a board of directors his or her attendance at and active interest in meetings and activities of the board, would be less than acceptable. The interests of the municipal council would probably be better served if each of its appointees was interested in contributing to the betterment of the children's aid society and its services to its clients and was prepared to take an active part in the function of the board of directors of the society to that end. Such an appointee would probably be more diligent in attendance at meetings of the board of directors and committees and thus in expressing the views, if any, of the municipal council and more thorough in reporting thereon to the municipal council.

In the same way the interests of the children's aid society would be better served. A person interested in and willing to work to further those interests would be upon its board of directors. In the other scenario it might have as one of its board of directors a member of the municipal council, but one not really concerned about the children's aid society and its interests and problems and perhaps even one of the less ineffectual members of the municipal council not able to obtain the support of enough of the other members of the council to secure appointment to a more prestigious or politically beneficial position.

All in all such an appointee would be a better member of the board of directors and a better representative of the municipal council.

Hopefully a programme by each children's aid society to inform members of the public of the organization, function and duties of the society will create greater public interest in the affairs of the society. From that greater interest a willingness of more people to participate in those affairs should evolve.

Mrs. Wood suggested that it was not in the best interests of the Society for there to be a nominating committee which put forward in nomination at each annual meeting only the number of names required to constitute the full complement of the Board of Directors. Mrs. Wood appeared to use that as a basis for her belief that the Board of Directors tended to be self-perpetuating and to control the entry of new members.

If that be so it was solely because no one saw fit to challenge the procedure. That would be an indication of the public's lack of interest in the affairs of the Society. There was no testimony as to the procedure and attendance at the annual meetings of the Society. Even without such testimony I am prepared to assume that whoever convened those meetings or conducted elections at them would make it clear that nominations from the floor or in some other manner apart from the nominating committee would be received.

In my view a nominating committee is useful. It will be even more useful if aspirants for election or appointment to membership upon the board of directors of a children's aid society are required to receive instruction as to the duties and obligations they will assume if elected or appointed. Any such benefit could be negated if, with or without a nominating committee, persons were nominated and elected or appointed without such instruction. They would be doing no favour to themselves or to the society.

7. *I RECOMMEND THAT each children's aid society establish and maintain an ongoing programme to inform the public of the organization, function and activities of the society and of its need for continuing support from the community. That programme should seek to encourage members of the public to become members of the society and to participate in its affairs, perhaps as members of the board of directors, or as members of standing or special committees. The goal should be a broad base of community membership and support.*

RECOMMENDATION #8

In my comments leading to the preceding recommendation I expressed my reservation about the statutory provision whereby municipal councils were restricted in their selection of those members of the board of directors of the local children's aid society who are to be appointed by the municipal councils. They are restricted to choosing from among themselves even if none of them want to be appointed and even if they know of persons in the community who are willing to be appointed and who would be acceptable to the municipal council.

8. *I THEREFORE RECOMMEND THAT the Ministry seek an amendment of the* ***Child Welfare Act*** *so as to remove therefrom the requirement that any municipal representative appointed to the board of directors of a children's aid society by a municipal council must be a member of that municipal council.*

RECOMMENDATION #9

My next recommendation flows from or expands upon my third recommendation which was that there be continuing programmes to prevent or reduce abuse. Witnesses upon the Inquiry, however each may have spoken, expressed the need for members of various professions and callings to have received training directly addressed to the problem of child abuse. Knowledge and skills derived from such training would assist in achieving the goal of prevention or reduction of abuse.

I can do no better than to express as a basis of this recommendation a recommendation in the Garber Report of June, 1978 which was:

> "20. That the Ministry of Community and Social Services request, through the inter-ministerial committee on Children's Services, that the Ministries of Correctional Services, Health, Education, Attorney General, Solicitor General, and Colleges and Universities include appropriate child abuse training content in the curricula for their respective professions. Such enriched training programs will enable social workers, physicians, nurses, lawyers, policemen, judges and teachers to become aware of child abuse indicators, assessment methods and referral strategies, as part of their professional training."

In my view such content of curricula must also be subject to continuing assessment to ensure that the curricula continue to reflect the best of current professional opinion, practice and procedure. Those responsible for the preparation of any such curriculum must recognize the need for the practitioners of that particular profession or calling to co-operate with practitioners of other professions and callings. Thus, any such curriculum should include recognition of the roles of such other practitioners and the need for integration of effort and exchange of information and opinions. That is one aspect of co-operation mentioned in my first recommendation.

Mrs. Farina's testimony in relation to the above-mentioned recommendation in the Garber Report was to the effect that the Ministry was favourably disposed thereto and was asking the Inter-Ministerial Committee of the Provincial Government to comment upon it. She said some tentative or experimental steps had been taken to pursue the recommendation.

The Minister may care to inquire as to just what has been done to that end. Lest little or nothing has been done I will repeat the recommendation of the Garber Report with the modification I have mentioned.

In a sense implementation of that recommendation is an extension of the recommendation that members of the public be made aware of the phenomenon of abuse.

The recommendation simply recognizes that some members of the public, by reason of their professions, callings or employment are more likely than others to encounter incidents of abuse or conditions of unusual risk for children and thus to have an opportunity to assist directly in efforts to prevent or reduce abuse.

Examples come quickly to mind. The physician who sees a child in the emergency department of a hospital, the family physician who sees the child in the child's home or the physician's office, the physician who sees one or both of the parents of the child and the nurse who is assisting the physician in any of the above circumstances all have an opportunity to identify circumstances which may indicate that the child has been abused or is in circumstances which may indicate that there is an unusually high risk that the child may be abused. The physician or nurse may be in such a position even before or shortly after the child's birth. Teachers have similar opportunities after the child is enrolled in school. Public health nurses have similar opportunities arising in the course of performance of their duties. So too do other social workers, police officers and lawyers.

The task then is to ensure that, so far as possible, all who, by reason of profession, calling or employment, may have special opportunities to recognize an incident of child abuse or the unusual danger thereof be able to identify what they observe and to assess what they identify and then to act appropriately.

Witnesses upon the Inquiry spoke of the subtleties of abuse and the need for special skills, training and experience to enable one to identify, assess and treat or manage cases of abuse. They spoke of indications which might be recognized and assessed only if one has particular expertise. They spoke of the need for persons about to enter various professions or callings to receive special training during their academic courses, including periods such as internship, service under articles, apprenticeship or probationary employment.

Again the testimony upon the Inquiry was not the first expression of the need for such special training. The authors of the Garber Report wrote of the identification of multiple and complex factors involved in child abuse in its various form. They wrote:

> "No single profession or discipline has knowledge of all these factors nor the expertise to deal with the phenomenon of abuse."

That sentence formed part of the introduction to the twentieth recommendation in the Garber Report which I have set forth above.

I note particularly the reference in that recommendation to the role of judges. Witnesses upon the Inquiry made comments to like effect that cases of child abuse required especial skill on the part of judges. At the same time it was recognized that the outcome of any proceedings in a court depended upon the care and skill with which those charged with the duty to investigate, prepare and present the case had performed their various tasks.

Dr. Bates spoke of some who suggested that it was enough to leave it to the judge to decide. He disagreed. He said that if a case were not properly investigated, prepared and presented in court the decision was really made by the worker whose lack of skill or care resulted in inadequate investigation, preparation and presentation.

He spoke of one judge in a jurisdiction outside of Canada who told him that the majority of applications to court lost by the local equivalent of children's aid societies were lost because of the failure of the persons responsible for the applications to investigate and obtain sufficient evidence to support the applications, or to prepare for the hearings or to make adequate presentations in court.

There was no such testimony with reference to the situation in Canada or Ontario. I gather Dr. Bates felt the comment might equally apply here. I would think it probably would. It certainly did apply to Kim's case.

In my view Kim's case amply demonstrated that comment. I cannot imagine that any judge would have been better qualified than Judge Nighswander to sit in judgement upon Kim's case. His *curriculum vitae* shows his vast experience as a social worker prior to his elevation to the bench. As I have written in the main body of the Report he was misled by what was presented before him.

There was virtually no investigation of the case beyond the physical description of some of the injuries Kim suffered. Opinions with reference to the identity of Kim's abuser were expressed in testimony upon the Inquiry, but the records of the Society do not particularly confirm such testimony and certainly the opinions, if they had been formed, were not expressed before Judge Nighswander who was led to believe, wrongly, that Kim was abused by Annals Popen and not by Jennifer Popen.

There was no investigation of the background of Kim's parents. The Society knew nothing of importance about them. Preparation for hearing of the charge under section 40 of The Child Welfare Act and of the Society's application was sketchy and inadequate, particularly in relation to the Society's application. The absence of witnesses on occasion and the absence of consultation between Mrs. Harvey and Mr. Carter illustrate that.

Presentation of the Society's application was inadequate. In part that arose from lack of necessary investigation and preparation, but it also arose out of Mrs. Harvey's almost casual presentation of the application. She did not even cross-examine Jennifer Popen when Judge Nighswander, on his own motion, chose to call her to testify and she gave testimony that was incredible and misleading and which was contrary even to Mrs. Harvey's own opinion as stated by her upon the Inquiry, but which remained unexpressed before Judge Nighswander. It would seem she was "leaving it to the judge."

It is my opinion that, to that extent at least, judges and courts are limited in the decisions which may properly be made. They are, to large measure, dependent upon the knowledge and skills of others. I mention again the importance of skills of advocacy in the adversary system and knowledge of law, including The Child Welfare Act, and knowledge of procedure, including rules of evidence.

I accept that judges should have an awareness of the determinations that might be reached and of the facilities in the community to assist in the care and protection of children. But it is necessary for the parties to the proceedings to assist the courts and judges in that regard by presenting material to assist in deciding what determination and what facilities, if any, may be most appropriate in the particular case.

Subject only to that disclaimer, I accept the thrust of that recommendation in the Garber Report and acknowledge it as the basis of my next recommendation. If all who have professions or callings which give them particular opportunities to detect abuse or its possibility and to assist in the treatment or management of any such matter are adequately trained in relation to and aware of abuse, they will more fully and satisfactorily fulfill the duties which fall upon them because of their professions or callings.

Bearing in mind the testimony upon the Inquiry it would seem to me that it should be clearly shown in the training for each profession or calling that the members of that profession or calling are not the repositories of all knowledge and skills with reference to child abuse. There is a need for the members of each profession or calling to recognize that successful detection, assessment, treatment and management of cases of abuse will require them to co-operate one with the other and others and to share knowledge, information and skills with and to assist or be assisted by others.

Clearly The Child Welfare Act places the primary responsibility for the care and protection of children upon the Ministry and upon children's aid societies in Ontario. Training in child abuse should not be simply a peripheral part of the training and experience of social workers employed by the children's aid societies and by the Ministry to serve in the field of child welfare. In their case, such training should be central to their education.

The testimony upon the Inquiry and relevant literature emphasized the demanding nature of the employment of those engaged upon child abuse cases. Great care must be taken in their selection and in their training. In part, Kim's case is the tragic result of a lack of such care.

Training in matters relating to child abuse may be a relatively small part of the training of candidates for some professions and callings or for some branches thereof.

I think for example of police officers. A probationary constable probably will not be expected or required to have more than a very general acquaintance with the problem of child abuse and its manifestations. Probably all he or she would need to know would be such as to alert him or her that others in the police force should be informed. On the other hand if a larger police force should establish a squad or team to investigate and to assist other agencies, such as a children's aid society, in cases of abuse, real or suspected, the members of that squad or team, and particularly its leader, would require much greater knowledge of and training in the phenomenon.

I think also of physicians. All physicians as a part of their basic training should acquire some knowledge of and experience with the phenomenon. Those who choose to emphasize or concentrate upon paediatrics or to confine their practices to paediatrics should acquire far greater knowledge and experience in the matter.

The same sort of reasoning should apply to all other professions and callings.

9. *I RECOMMEND THAT the Ministry, through the appropriate processes and procedures of the Government of Ontario, seek to ensure that the curricula for the education and training of persons who wish to enter various professions and callings in the Province of Ontario which are governed or regulated in any way by any Ministry or branch of the Government of Ontario contain material upon child abuse sufficient to enable the candidates, when graduated or certified, to have degrees of knowledge, training and skill in relation to child abuse commensurate with their relative positions within their own professions and callings and in relation to other professions and callings. The training and education of candidates in each profession or calling should emphasize the need for the members of that profession or calling to co-operate with the members of other professions and callings in the entire range of activities in relation to child abuse. Those activities include the initial detection of the existence of abuse or the risk of its possible occurrence in the future, the subsequent investigation and then the management and treatment of the case in all of its aspects. The appropriate Judicial Council should be requested to include discussion of child abuse in the continuing*

programmes of seminars for judges, particularly those who sit in the provincial court (family division) and thus are most often most directly confronted with problems relating to child abuse. Such curricula should be the subject of on-going review to ensure that they remain current and reflect all developments in professional opinions, practices and procedure whether caused by legislation, regulation or judicial decision or resulting from experience with earlier opinions, practices and procedures.

RECOMMENDATION #10

In approaching the next recommendation I bear in mind the testimony upon the Inquiry, particularly that of Dr. Turner. This recommendation is, in effect, an addendum to the preceding recommendation, Recommendation #9.

I am satisfied that child abuse has been with us since time immemorial and has been recognized and treated and managed to some degree. However it would seem that it is in only relatively recent times, perhaps even as recent as 1978, that the full significance of the phenomenon has become a concern of the public and even of those who are responsible for the care and protection of children.

Dr. Turner spoke of the need for social workers to keep themselves informed of the recent developments in law, practice and procedure relating to their field, including child abuse. He spoke of the need for social workers to maintain personal libraries which, even if small, should be current. The tone of his testimony suggested to me that such as children's aid societies, other social agencies and teaching institutions.

Dr. Turner spoke of Mrs. Harvey's credentials as a social worker. They were impressive, but he wondered if she had kept herself current. There was not much to suggest that she really had. Her reply to Mrs. Farina that the Ontario Association of Children's Aid Societies could not tell the Society anything that would help the Society's court worker, indicates to me an undeservedly smug reliance upon the past. Mrs. Harvey was the Society's court worker, but she felt none of those attending the seminar from virtually every other children's aid society in Ontario, supplemented presumably by persons from other types of organizations and professions, could help her. Kim's case showed how wrong she was.

10. *I RECOMMEND THAT each person employed or practicing as a social worker or holding himself or herself out as a specialist in child abuse in any other profession or calling in the course* *of training for which there is a component related to child abuse, even though such component may have been added to the course of training since the graduation or certification of any such person, be required to maintain, by continuing courses and examinations upon the subject, an appropriate level of knowledge and skill in the light of current law, practice and procedure related to child abuse.*

RECOMMENDATION #11

One of the most striking aspects of the testimony upon the Inquiry was the failure, for whatever reason, of various persons to comply with the provisions of The Child Welfare Act requiring them to report to a children's aid society or Crown attorney information of Kim's having been physically ill-treated.

Having heard the testimony upon the Inquiry as to the overall nature of abuse of children and that physical ill-treatment may be only a part of the phenomenon and less damaging than other parts of it, that failure by some is even more striking.

Until August 31, 1975 no one made any report directly to a children's aid society or Crown attorney in respect of Kim. By that time she had suffered severe and easily noted injuries and had been in hospital on a number of occasions. Doctors, at least one nurse and one relative were concerned for her safety. One doctor had telephoned to the Sarnia Police Force who had informed the Society.

In essence no one fulfilled the requirements of the statute. Some, such as Mrs. Fay Popen in June, 1975, presumably unaware of the statutory requirements, tried to protect Kim when she reported her fears to Dr. Jumean.

From the testimony upon the Inquiry I doubt that many citizens were aware of the provisions of the statute requiring anyone to report information about abuse. I have no reason to believe that, apart from whatever information might flow from the "highly publicized" cases of abuse, such as Kim's in 1978, the situation is any different since the revision of the statute in 1978.

The foregoing comments relate to members of various professions and callings as well as to members of the public in general. Some of the witnesses, like Mr. Higgins and Mr. Wryzykowski, by reason of their profession, expressed views as to the need to amend The Child Welfare Act as it was in 1975 and 1976 so as to exempt solicitors from the requirement in situations in which they were involved in their professional capacity. In Mr. Higgins' case at least that view arose after the fact and he acknowledged that he was not fully aware of the requirement prior to the Inquiry. The 1978 legislation specifically recognized and protected the privilege existing between a solicitor and client.

I am satisfied that it is important that reports as required by the legislation be made promptly. They must then be fully and properly investigated at once, but that latter is not directly a part of the concern to which the recommendation I am now discussing is directed.

From the testimony I am satisfied that many, who should have made such reports about Kim, did not make any report because of ignorance of the statutory provisions. Some had no awareness of the requirement. Some, like some doctors, relied on a professional colleague to do whatever was required. Some, like Mrs. Hewitt, by her training and experience as a nurse, felt that their positions prevented them from making any such report except to professional superiors not mentioned in the statute. Some, like Mr. Higgins and Mr. Wryzykowski, who were solicitors, felt that the solicitor-client privilege would not permit them to report information received from their clients.

All of that made it clear to me that there was need to inform everyone of the provisions of the statute requiring reports to be made to a children's aid society or Crown attorney. Reports are now required to be made only to a children's aid society.

The public cannot be adequately informed by one announcement or statement by the Ministry or children's aid societies. The announcement or statement must be repeated frequently. Such information should be part of the various courses of education, general and specialized in the schools, colleges and universities relative to child abuse. It should be part of the programmes to keep persons practicing or working in various professions and callings current and up-to-date in their knowledge. Members of the public should be made aware of the requirement of the legislation by continuing programmes reminding them of their responsibility under the statute.

I envisage such programmes as being particularly suited to development and delivery by the Ministry, but it would be helpful for the local children's aid societies to adapt such programmes to local conditions. Public service announcements in and by the media would seem to be an accepted way of informing the public of such a responsibility. Cable television channels devoted to local community activities and interests and public service would seem to be another means of presenting the information.

It would seem to me that dissemination of information to the public as part of a programme to prevent child abuse might use to advantage means similar to those used by various health-related associations or organizations to inform the public of various diseases, or used by police forces to seek to prevent crime, or used by health departments to inform the public of the dangers associated with drugs and narcotics or used by charitable organizations to seek public support. Many models are available.

Some of the witnesses upon the Inquiry who, at least by the time they testified, had some awareness of the requirement upon them to report information about abuse, expressed concern that they might have incurred civil liability or professional censure had they made such reports. It is necessary that any programmes of education in this area inform the public and anyone to whom the particular programme is directed that the Child Welfare Act now in force, like its predecessor did, provides protection from civil liability and professional censure.

If the programme of education is directed towards a particular segment of the population it should deal with any of the special concerns members of that group may have which may militate against reporting. If for example they have concern about their own professional conduct they should be advised of any appropriate statutory or regulatory provisions governing their profession and of any relevant rulings by the body governing the conduct of their profession.

The testimony upon the Inquiry satisfied me that several persons would have been justified or required to make a report in respect of Kim pursuant to section 41 of The Child Welfare Act. Earlier portions of the Report reflect my opinion of the results flowing from the failure of those people to make such reports. There was, in my view, a wide range of culpability.

In the event any person found guilty of an offence for failing to report information were a member of some profession or calling it would then be the responsibility of those, if any, responsible for the regulation or administration of that profession or calling to determine whether such finding of guilt would affect the person's status in that profession or calling.

Inherent in the testimony of Mr. and Mrs. Vandenbergh was an expression of an unwillingness by lay persons to become involved in what they regard as another family's or person's personal matter. That phenomenon occurs in many areas of life and not only in child care and welfare.

I felt that no lay person who testified upon the Inquiry was aware of the provisions of section 41 of The Child Welfare Act. That same observation might be made in respect of many of the witnesses whose attendance upon the Inquiry resulted from their involvement in Kim's life by reason of the nature of their professions or employment. Some had some awareness of the statutory provisions, but did not fully appreciate the obligation those provisions placed upon them.

Some, such as Mrs. Faye Popen, apparently unaware of the legislation, turned to others. She reported to Dr. Jumean. He in turn reported later to the Sarnia Police Force and The Lambton Health Unit rather than as required by the statute. Others, doctors and Mrs. Hewitt, felt constrained by their professional and employment relationships and for some months made no report as required.

In my view a programme to inform everyone of their obligations under the statute to report incidents or suspicion of abuse will overcome at least some of the reserve or misapprehension which led to the absence of reports to the Society or Crown attorney upon Kim's injuries. I appreciate that even then some in our communities will choose not to become involved and their failure may not be known to anyone except themselves.

Such a programme should emphasize the obligation imposed by the Child Welfare Act to make such reports and the penalty for failure. Anyone who fails to make a report as required should be subject to a penalty to be determined by the court within a limit to be prescribed by legislation.

Such a programme should emphasize the protection against civil liability provided by the legislation.

In developing and presenting such a programme the Ministry should, through the appropriate other ministries or departments of government, enlist the support and assistance of the bodies responsible for the regulation and administration of professions, trades and callings the practitioners of which may assist in the prevention, detection, treatment or management of child abuse.

11. *I THEREFORE RECOMMEND THAT the Ministry develop and operate an ongoing programme to inform members of the public generally and members of appropriate professions and practitioners of appropriate callings in particular of the statutory duty to report information of any incident or suspicion of abuse and of the importance of such reports to the children's aid societies*

RECOMMENDATION #12

During Kim's lifetime The Child Welfare Act, in section 41, required persons having information about a child's abandonment, desertion, physical ill-treatment or need for protection to report that information to a children's aid society or Crown attorney. That report was required even if the information were confidential or privileged. The informant was not liable to civil liability unless the report was made maliciously or without reasonable and probable cause. Failure to make such a report was not an offence and no penalty was provided.

The current legislation enacted in 1978, contains a requirement, in section 49, that anyone having such information report it to a children's aid society. There is a sub-section beside which is the marginal note "Duty of professional to report." That sub-section requires anyone to report to a children's aid society if he or she has reasonable grounds to suspect in the course of his or her professional or official duties that a child has been abused and that the abuse was caused or permitted by a person having charge of the child.

A subsequent section, section 94, makes it an offence, punishable on summary conviction, for any such professional or official to fail to make such a report. Anyone guilty of that offence is liable to a fine of $1,000.00.

From my reading of available literature, I gather that Ontario was somewhat behind some other jurisdictions in imposing sanctions upon persons who fail to comply with statutory requirements to report cases of abuse or suspected abuse of children.

I quote now again from the writing of Dr. Fontana and Dr. Besharov, in The Maltreated Child, Fourth Edition, 1979:

> "Although the early recognition and reporting of suspected child abuse and neglect are the first essential steps in preventing further maltreatment, many physicians, nurses, social workers, teachers and others do not report the abuse or neglect that they see. The reluctance

> of many professionals to take action to protect children resulted in the development and passage of laws in all states which require, under penalty, certain professionals to report known and suspected child abuse and neglect.
> The medical professional was the first, and remains the foremost, target of reporting statutes. But the early focus on physicians (who were considered the professionals most likely to see injured children) quickly expanded to include all professionals in the healing arts, and has since broadened to include teachers, social workers, police, clergymen and coroners, among others. In addition, an increasing number of states (over twenty at this writing) require "any person" to report known and suspected child abuse and neglect."

It would seem to me that the combined provisions of section 49 and section 94 of the Child Welfare Act are unduly limited. The definition of "abuse" in section 47 of the 1978 legislation includes, specifically, "physical harm" and "sexual molestation." The testimony upon the Inquiry indicated that it is not only those who have "charge" of a child who may physically harm or sexually molest the child. Such harm or molestation may result from or be the act of a person, neighbour or relative trusted by the child even though the child is never in his or her charge.

I note too that section 47 of the present legislation provides that no one "having the care, custody, control or charge of a child" shall abuse the child or permit the child to suffer abuse. The absence of the words "care, custody [and] control" from section 49, although mentioned in section 47, would seem almost to invite the suggestion that the professional person or official is required to report suspicion of abuse by a person having "charge" of a child, such as a baby-sitter, but is not required to report suspicion of abuse by a person having custody of a child, such as a parent of the child pursuant to a court order.

Aside from that possible difficulty, it is my opinion that section 49(2) does not impose upon the professional person or official the duty, and thus liability to the penalty set forth in section 94, to report any suspicion of abuse, including physical harm or sexual molestation, by a relative, neighbour or family friend who cannot, in any sense, be regarded as having "charge" of the child.

The rationale of section 49, coupled with section 94 of the new legislation, escapes me. It would seem to me to be incongruous that, if a professional person or official in the course of his or her practice or office has reason to suspect that a child has been physically harmed or sexually molested, that professional person or official should be liable to a penalty for failing to report such suspicion if it relates to one having "charge" of the child but not so liable if the suspicion relates to someone else, such as a close and trusted relative, who may have opportunity to cause much more harm than the sometime baby-sitter. Why should the possible imposition of a penalty for failure to report depend upon the child being in the "charge" of the person suspected of causing the abuse?

It would seem reasonable that persons practicing various professions or callings reasonably requiring knowledge of or skills relating to child abuse, its detection, treatment and management might be subject to penalty for not reporting to children's aid societies reasonable suspicion that a child has been abused. By entering upon those professions or callings they accept the benefits, rights and privileges thereof and hold themselves out as having special knowledge and skill.

It seems odd that they should be liable to a penalty only if they suspect the abuse was inflicted by someone in a particular class.

I have difficulty in determining the full meaning of the words "professional or official duties" as they are used in section 49 of the 1978 legislation. I think for example of Mr. Khattab. I am not satisfied that in its present state social work is a profession. I am not satisfied that a social worker is an official. It is not clear to me that Mr. Khattab, who was called a social worker, was a social worker within the meaning of The Child Welfare Act during Kim's lifetime or would be a social worker within the meaning of the 1978 legislation.

The Regulations made under The Child Welfare Act required each children's aid society to classify its social workers. The first classification stated was that of "Social Work Assistant." To achieve that classification of social worker one needed only to have completed Grade XIII in Ontario or its equivalent as determined by the Minister or to have been actively engaged as a social worker in a children's aid society for at least one year immediately prior to June 1, 1966. It seems to me rather farfetched to suggest that one, perhaps eighteen years of age and a graduate of a Grade XIII course and thus possessing those minimum qualifications, would be regarded as being a member of a profession or an official.

Then followed five classifications of social workers numbered I through V, with increasing requirements for education or experience to enable classification in each category. There was no other definition of "social worker" in The Child Welfare Act or the Regulations thereunder.

The 1978 legislation, more particularly the Regulations made thereunder, does contain a definition of "social worker" for the limited purpose of those Regulations. Part III of Regulation 388/79 is entitled "staff qualifications." The first section in Part III is numbered 16 and provides that in Part III the term "social worker" means one whose duties consist of investigating or supervising the care of children, whether or not the children are in the care of a children's aid society, providing guidance and counselling and having qualifications set out in section 19 of the Regulation.

Section 2 of Regulation 389/79 requires every children's aid society to classify its social workers according to classifications bearing titles similar to those in the Regulations under The Child Welfare Act in force during Kim's lifetime. Regulation 388/79 refers to those classifications and proceeds, in section 19, to set forth the qualifications required to enable persons to be granted the various classifications.

Again the first classification is that of "social work assistant." The qualifications for that classification are identical with those for that classification under The Child Welfare Act prior to 1978. Therefore I repeat my earlier comments upon the suggestion that one possessing such minimum qualifications would be a member of a profession or an official.

All of that seems to me to demonstrate Dr. Turner's testimony as to the rather loose and indefinite use of the term "social worker." I gather that other statutes may, again for their own purposes, contain definitions of the term which may be quite different from those under the Child Welfare Act.

Apart from questions as to what duties are "professional or official," it seems to me that there may very well be difficulties in seeking to prosecute anyone for a contravention of section 49(2) of the 1978 legislation. That difficulty, to my mind, would be in establishing that the person's suspicion of child abuse arose "in the course of the person's professional or official duties."

I think for example of a mother or father suffering some minor ailment or injury, such as a cold or a cut finger, attending at a doctor's office for examination or treatment of such ailment or injury. One of that parent's children accompanies the parent, but merely sits in the waiting room where the doctor, in escorting the parent to the examining room, notices some bruising about the child's face. The doctor had not treated or examined the child at any time nor had any treatment or examination of the child by the doctor been requested at any time. I think it unlikely that whatever might pass through the doctor's mind as to that bruising would arise "in the course of [his or her] professional or official duties."

But I wonder if the result would be different if the parent, rather than suffering a cold or cut finger, was suffering from some of the matters mentioned by Dr. Bates, such as undue use of alcoholic beverages, drugs or narcotics or perhaps an emotional illness, as being indicia that a child in such a person's home might be in some unusual risk of being abused.

I can imagine that real life could write scenarios incorporating infinite variations upon that theme. I am confident that skilled defence counsel, if they have not already done so, will soon show the difficulty of prosecution under section 94 of the Child Welfare Act, as enacted in 1978.

It would seem to me that it would be preferable to provide that failure to report information or suspicion of abuse is an offence, and then to provide a maximum penalty. That then would leave the ultimate determination of penalty, in the event of a finding of guilt, to the court. In that determination all factors, including the "professional or official duties" of the accused, would be considered.

12. *I THEREFORE RECOMMEND THAT the Ministry seek the appropriate amendment of the Child Welfare Act so as to make it an offence for anyone having information about any incident of child abuse or suspected child abuse to fail to report such information to a children's aid society as required by the statute. Anyone found guilty of that offence should be liable to a fine not exceeding an amount to be prescribed in the legislation and which will be large enough to be a true deterrent to anyone who is considering remaining silent when in possession of information which, by reason of the legislation, he or she is required to report to a children's aid society. There was no testimony to enable me to suggest what such a penalty might be, but the present penalty of $1,000.00 for persons having professional and official duties appears to me to be rather modest.*

RECOMMENDATION #13

I have already mentioned the testimony of Mr. Higgins and Mr. Wryzykowski with reference to the provisions of The Child Welfare Act in effect during Kim's lifetime requiring everyone to report information about abuse. The provision was broad enough to apply to solicitors who received the particular information from a client as part of the instructions to or retainer of the solicitor to act for or on behalf of the client.

I share their concern as to the unique role of a solicitor in such a circumstance. It would seem that the Legislative Assembly recognized the validity of that concern. The legislation enacted in 1978 requires anyone to report such information even though it be confidential or privileged, but it contains another sub-section which states that that statutory requirement does not abrogate any privilege that may exist between a solicitor and the solicitor's client.

In my view the preservation of the solicitor and client privilege is essential. If that privilege is not preserved men and women may be deprived of adequate defences of proceedings against them or adequate presentation of their positions in other proceedings.

Perhaps because of the testimony upon the Inquiry I may be more aware than many that abuse of children is a serious problem and an horrendous offence. Persons who are parties to proceedings involving the care of children and allegations of offences against children are entitled to legal services and to the privilege of communications between them and their solicitors with reference to such proceedings, allegations and offences. In my view a person involved in a case in which child abuse is alleged is entitled to legal services and the protection of the solicitor-client privilege just as much as a person charged with murder, rape, manslaughter, treason or any other serious crime.

Persons charged with other criminal offences are entitled to remain silent unless they choose to testify upon their trials. I think the same principle should apply to persons charged with offences involved with cases of child abuse. It could not apply if their solicitors were required to divulge information, no matter how damaging it might be to their case, which would otherwise be within the ambit of the privilege of solicitor and client.

I have earlier written that children's aid societies should have legal counsel and advice in child abuse matters. In a sense the preservation of the privilege of the solicitor-client privilege is the other side of that same coin. Each party to judicial proceedings is entitled to counsel and advice because he or she, fearing forced disclosure of information which he or she, rightly or wrongly, regards as unfavourable, may not fully and candidly inform counsel of all relevant matters.

It should be recognized that not all communications between a person and a solicitor are subject to the solicitor-client privilege. The privilege exists only if there is a relationship of client and solicitor in relation to the subject matter of the communication.

I recognize that preservation of that privilege may prevent or hinder the presentation of all information relevant to a particular proceeding. Indeed the assertion of that privilege by Jennifer Popen resulted in some restriction of certain testimony which counsel sought to elicit. However that restriction did not have any great effect upon the overall testimony upon the Inquiry because Detective Inspector Hill and others engaged with him to investigate matters on my behalf and to assemble material for presentation upon the Inquiry had completed a painstaking and thorough investigation and examination of all of the events of and relating to Kim's short life.

In a portion of this Chapter of the Report, I deal with the need for proper investigation of reports or cases of abuse. In my view thorough investigation will, in most, if not all cases, remove the need to have anything in the nature of inculpatory statements or disclosures by a person to his or her solicitor.

The presence of counsel for both parties can be helpful to everyone concerned. I have noted that it was perhaps a comment by Mr. Higgins when requesting a pre-sentence report upon Annals Popen which led to Dr. Curtin's report which, if read and properly used by Mr. Higgins' adversary, the Society and Mrs. Harvey, might have proven very beneficial to Kim. I think too the presence of counsel can be very helpful to everyone by reason of his or her ability to be a bridge, as it were, to transmit information and understanding to the client who may more readily accept it from a trusted counsel whose advice is respected.

I regard that latter as being akin to the testimony as to the desirability of public health nurses and social workers establishing a rapport with their clients, including, for my present purposes, the families of abused children. Such good rapport was viewed as being helpful or even essential to successful intervention by the social or health agencies. Responsible counsel can assist in the development of such rapport without in any way being derelict in their duties as solicitors.

The Legislative Assembly recognized the importance of preservation of solicitor and client privilege by providing, in subsection 4 of section 49 of The Child Welfare Act, 1978 that nothing in subsection 49 would abrogate any such privilege.

13. *I THEREFORE ENDORSE AND RECOMMEND the retention of the privilege of communications between solicitor and client so that a solicitor is not required to report any information about abuse given by a client who is party to any proceeding in which the particular incident of abuse is or may be a factor.*

RECOMMENDATION #14

It is apparent to me that we can succeed in breaking the cycle of abuse which Dr. Bates mentioned only if all persons in our community are better informed about the phenomenon of child abuse. Education would seem to be an important element of any programme to prevent abuse. I have already written of the education and training of persons entering or practicing professions and callings. I want now to direct attention to the need for programmes of education with reference to child abuse to be delivered or available to the public generally.

Mr. Charko in his testimony spoke of the need to train people to be good parents, that is to care for children properly and without abuse. He expressed himself in an intriguing style. I do not wish to attempt to paraphrase or examine his testimony without setting forth a portion of it so that if I err in interpreting his testimony my error will be apparent to those who read the Report. He said:

> "...besides learning there is something more than just learning, there is a lot in the saying *non schola, sed vita discimus*, which in a sense means not for school, but for life we are learning and it seems to me that that whole area if we can teach a child two and two is four then maybe we can help this child to become a parent and become individual and this seems to me it could be done maybe right from grade one as a subject that would prepare every child for living, that would teach him how to relate to other human beings, how to relate to family setting, how to assume responsibility, but we are saying in a sense, you have freedom, we're going to teach you what you want to be taught, if you don't want it that's the end and then we are saying, you are not able to function in the community, out you go to fail or this type of thing. The whole area to me if we don't do, sit down also with the educators, we won't resolve the problem and we will be discussing these issues of abuse twenty-five years later..."

Mr. Charko may be somewhat in error in his translation of his quotation from Seneca. I am informed its more accurate translation is "we learn not at school, but in life" or "we learn not by lecture, but by life."

My understanding of the thrust of Mr. Charko's comments is that he believes the training of persons to be good parents should begin even while they are children, perhaps not yet enrolled in school. Such training would involve instruction to improve skills in various settings and relationships, family and personal, and in assumption of responsibilities. He urged those engaged in education to include curricula courses to provide that instruction.

It seems to me that Mr. Charko was voicing the need for preventive programmes, beginning at an early age and continuing even beyond school, as a necessary element of any successful plan to solve the problem of abuse. In the same area of his testimony he said that the solution to the problem did not lie only upon children's aid societies, even much enlarged societies, but lay upon a number of public and private agencies. He said that child abuse could not be solved at the local level, but would require intervention and assistance by provincial government agencies.

I view Mr. Charko's approach as being similar to Dr. Bates' opinion that preventive programmes are necessary if we are to break the cycle of abuse.

Dr. Fontana and Dr. Besharov express a corresponding opinion that parenting should be taught in our school systems. They deplore the great lack of formal adult training courses for parenting. That lack in the City of Sarnia and the County of Lambton was demonstrated by Mrs. Harvey's testimony as to her search for some course of training for Jennifer Popen and Annals Popen. She said the Parent Effectiveness Training Course was all she could find. It was not especially designed or intended to deal with the particular problem.

It is interesting to note that Dr. Fontana and Dr. Besharov comment favourably upon parent effectiveness training programmes as a means of providing adult education in the skills of parenting. I presume that such programmes are generally similar to that in which Jennifer Popen and Annals Popen were enrolled.

It is my view upon all of this that training or preparation for parenting should begin at an early age. As Mr. Charko suggests, it is part of preparation for life and inter-personal relationships. Such training should form part of the curricula of our school systems. It should include appropriate portions relating to abuse in its many forms, neglect, physical injury, emotional abuse or deprivation and sexual abuse or molestation.

The opportunity to obtain such training or information should not cease with the child's graduation from school or leaving school. Corresponding courses should be available in the community as part of the adult continuing education programmes.

I envisage inter-disciplinary teams in each community being responsible for the preparation of the materials to be used in the community and participating, in co-operation with educational authorities to an appropriate extent, in the delivery of the courses. I realize that again the function of the local inter-disciplinary teams will be guided or directed by materials emanating from or approved by the various ministries or departments of government regulating the affairs of the participating disciplines. In that latter area the Ministry should assume a role of importance and responsibility to ensure that the needs of the local children's aid societies are fully appreciated and, in turn, that those societies are kept informed of developments in educational procedures.

It is to be hoped that education or information about the duties and responsibilities of parents and about the problems which may arise in families will be of benefit to all who receive such education and information.

It will strengthen the resolve of those who were raised in families where love and tenderness flourished. That cycle will remain unbroken.

It will show those who have been abused by their parents, guardians, relatives or others that they have truly been victims and that, unless something is done, there is great likelihood that they in turn might abuse their children. With that education and information and with encouragement and support flowing from it, those who have been abused may more likely recognize that, because of their own history of having been abused in childhood, they may encounter particular problems in relation to their own children. Hopefully they will be encouraged to break that cycle.

14. I THEREFORE RECOMMEND THAT the Ministry co-operate with the Ministry of Education, the Ministry of Colleges and Universities and any other appropriate agency, governmental or otherwise, responsible for the preparation of curricula in schools and other educational facilities, to ensure that such curricula include adequate provisions for instruction in the responsibilities of parenthood. Such intruction should be part of the general curricula and should be part of every pupil's personal course of study in elementary and secondary schools. Appropriately advanced instruction should be available to all students in post-secondary schools, colleges and universities. Such instruction should be available in adult education programmes. Such instruction should include elements relating to child abuse. With education and knowledge and with the confidence resulting therefrom the cycle of abuse may be broken. Children's aid societies and multi-disciplinary abuse teams in local communities should be encouraged to participate in the preparation and delivery of such programmes.

RECOMMENDATION #15

My next recommendation is an extension of earlier ones. A portion of its base is found in a recommendation in the Garber Report as follows:

> "21. That the Ministry continue the next phase of the child abuse demonstration program and maintain its initial and subsequent phases of ongoing training for child abuse personnel in the province."

Mr. Charko in his testimony expressed his opinion that the Ministry should provide more training for personnel working in the area of child abuse. He spoke of the need for care and in the selection of such personnel.

Mr. Lovatt testified as to his opinion that "in-service training is a must, not a frill."

In my view the Ministry must assume a primary responsibility for the preparation and distribution of materials to be used to effect such specialized training in child abuse. Witnesses upon the Inquiry spoke of the inability of the personnel of the Society to arrange sufficient time to prepare manuals of practices and procedures. I am not encouraged to believe that they could find sufficient time to prepare materials for specialized training in child abuse. I do not believe the Society was or would be unique in that.

Mr. Charko, an official of the Ministry, testified as to his belief that the Ministry should be more active in the provision of courses to train personnel in the field of child abuse and in the selection of such personnel. He suggested that the Ministry was then, in September, 1978, engaged in some special projects to learn more about child abuse and the investigation and management of such cases.

What was technically cross-examination of Mr. Charko by counsel for the Ministry really amounted to Mr. Charko's agreeing with counsel's statements phrased in much the way I came to expect from personnel of the Ministry who testified. In that style of statement by counsel and acceptance by Mr. Charko it was said that, among other things, training programmes were being embarked upon. In response to that statement, Mr. Charko did expand his response beyond simple acceptance and that response and subsequent statements by counsel and responses by Mr. Charko are transcribed as follows:

> "A. Certain areas, also children's aid societies individually they are taking some sort of in service training program that have developed, particularly larger societies, but even smaller ones, they meet together and also Dr. Herb Sohn has been going out to some societies to the staff to deal on child abuse committee and sort of reviewing that whole area, how the training could be provided and special training kits have been sort of, are available to the child abuse committee.
>
> Q. So that the child abuse program has been significantly developed?
>
> A. That's correct.
>
> Q. And it is continuing?
>
> A. Continuing to improve the whole system, the registry, the training, the procedures and so on. Some more documents will be released in the near future with regard to the whole child abuse program, plus several child abuse special projects have been introduced to learn more about child abuse and then sort of to see how we can treat such cases."

This may be another area where the Minister may care to inquire as to what really has come about since that testimony was given.

In that response Mr. Charko seemed to recognize what I regard as significant differences in the abilities of children's aid societies to devise, prepare and present training programmes. Larger societies may have sufficient personnel and other resources to do so. Smaller societies may not have such personnel and resources. Therefore it is, in my view, incumbent upon the Ministry to prepare adequate training materials in relation to all aspects of child abuse and to make such materials available to children's aid societies and other agencies or institutions which may be involved in any way with child welfare and care, particularly protection from abuse.

The Ministry, through its programme of seminars and workshops, should ensure that persons responsible for the in-service instruction and training of the personnel of the children's aid societies are themselves qualified to provide such instruction and training.

It was apparent during the Inquiry that medical practitioners and hospital personnel, among others, had some difficulty in Kim's case in interpreting or applying the provisions of section 41 of The Child Welfare Act.

Physicians relied upon fellow practitioners to make any necessary reports.

St. Joseph's Hospital had no formalized procedure to ensure that nurses or others of its personnel would report any instance of abuse.

Mrs. Hewitt's testimony was to the effect that nurses, by training and practice, would report only to physicians or nursing supervisors and would not feel free or obliged to report to any outside institution or authority such as a children's aid society or Crown attorney.

Mr. Khattab had not made any report to a children's aid society or Crown attorney in March, 1975 or until after Kim was in the *de facto* care of the Society in September, 1975.

I am satisfied on the testimony that medical and hospital personnel, even apart from their own professional relationships and training and practices, are not free of the basic problem faced by others. That basic problem is to determine what circumstances justify or require a report to be made in compliance with The Child Welfare Act.

Each children's aid society should ensure that such training programmes and materials are presented to the members of the community's multi-disciplinary team dealing with abuse. Efforts should be made by the children's aid society, through such teams, to ensure that all local members of each discipline or calling represented upon such a team receive the information from the programmes either by special presentations of the programmes or through one of the programmes to disseminate information.

I would regard implementation of the following recommendation as being partial compliance with the requirements of paragraph (b) of sub-section 2 of section 2 of the Child Welfare Act enacted in 1978. That paragraph imposes upon the Director appointed by the Minister for the purposes of that Act a duty to ensure that the children's aid societies do provide the standard of service and follow the procedures and practices prescribed by the Minister.

There was no such provision in The Child Welfare Act in force during Kim's life. I would have thought that the duty set forth in the new legislation was inherent in the former legislation. The testimony upon the Inquiry showed that the Director, an employee of the Ministry, did not ensure that the Society, at least in Kim's case, was providing services to a satisfactory standard and following acceptable practices and procedures. During Kim's life there were no "prescribed" standards, procedures and practices. The legislation enacted in 1978, in sub-section 3 of section 6, requires every children's aid society to provide services and to follow procedures and practices all to the standard prescribed by the Minister. That too was not expressly stated in the former legislation, and, in the absence of any such standards, practices and procedures having been prescribed, would have been meaningless.

This portion of the new legislation perhaps demonstrates my view expressed elsewhere that the personnel of the Ministry followed the hearings of the Inquiry and learned from those hearings, even in advance of the completion of the hearings, that there were serious deficiencies in the legislation and in the performance of the Ministry.

It now rests with the Ministry to prescribe standards, practices and procedures with reference to every aspect of the purposes of operation of children's aid societies and then to ensure that they are met.

Upon the Inquiry there was some testimony to suggest that in the Ministry's view the word "shall," as it appeared in The Child Welfare Act was not always to be treated as a mandatory expression. I would hope that as the Ministry interprets that word in relation to paragraph h of subsection 2 of section 2 and subsection 3 of section 6 it shall be treated as mandatory. That will mean the Minister must prescribe standards of service and procedures and practices to be provided or followed by the children's aid societies and then the Ministry, in the person of the Director, must ensure that services are provided to those standards and practices and procedures are followed.

The new legislation in a sense states the obvious as I have done in some recommendations. Kim's case demonstrated the need.

In another instance of restatement of the obvious, it is my view that the Ministry will not fulfill its statutory duties without ongoing study, review and revision of its published standards of services and procedures and practices.

15. *I RECOMMEND THAT the Ministry devise, prepare and distribute to children's aid societies and similar organizations serving families and children materials for training of personnel engaged or to be engaged in the detection, reporting, investigation and management of cases of child abuse and in the protection of children from abuse. Those materials should be subject to ongoing review and revision to ensure that they reflect current policies and procedures and any developments resulting from amendments of legislation or regulations or from judicial decisions. Those materials should be made available by the Ministry to other ministries or*

levels of government or agencies and institutions for the training of personnel who may be called upon by children's aid societies and similar organizations to assist in efforts to prevent and minimize child abuse and the results thereof. The local children's aid society should ensure that community child abuse teams and the professions, callings, institutions or organizations represented thereon have an opportunity to receive such training and information or the portions thereof relevant to their activities.

RECOMMENDATION #16

Elsewhere in this Chapter I recommend that all persons working in the field of child welfare keep themselves informed of current opinion, theory, practice and procedure. That will involve some effort by the individuals and perhaps some modest expense to maintain personal libraries.

In my view each children's aid society, as a corporate body, has a similar obligation. It too must remain current. That will involve the acquisition and maintenance of an adequate library of books and audio-visual material, with equipment to use the latter.

I recall no evidence upon the Inquiry to the effect that the Society maintained any library for the assistance of its social workers either in specific problems or in efforts to broaden their knowledge generally. In my view that is a deficiency.

16. I THEREFORE RECOMMEND THAT the Ministry should encourage each children's aid society to establish an adequate and current library of books and audio-visual materials, with appropriate equipment, for the use of the social workers employed by the society. The Ministry should make it clear that reasonable sums of such purposes will be approved as part of the annual budget process.

RECOMMENDATION #17

The overwhelming weight of the testimony of highly trained and experienced persons who were witnesses upon the Inquiry demonstrated the need for a "team" approach to the problem of child abuse. The concept of teams included teams of various compositions and for different purposes or different stages in any case of abuse or reported or suspected abuse.

There should be teams comprised solely of children's aid society personnel.

There should be teams comprising a variety of combinations of personnel depending upon the circumstances of the community and the particular case.

The local children's aid society, having the primary responsibility for the protection of children in the community, should be well represented upon any such team. Other members of such a team might be drawn from other community resources such as police, schools and boards of education, medical and hospital personnel, public health doctors or nurses and other social agencies or special purpose groups which may have expertise or knowledge which may be helpful to the team in the particular instance.

I am satisfied that the creation and maintenance of local teams, composed of persons possessing a multitude of aptitudes, skills, experience and training, is at least helpful and is probably vital to the success of any effort to prevent, limit or reduce incidents of abuse.

Kim's case was an example of what can happen when, in effect, one person, with little if any consultation with others, even within the children's aid society let alone beyond it in the community, makes decisions affecting the life of one child. Such decisions are much too important to be left to one person or even to a small limited group, particularly if that small group may be subject to domination by one person, whether that dominanation comes about by reason of that person's position in relation to the others or by reason of personality or otherwise.

It was said that in discussing any case involving the welfare of a child each member of the group will reflect the knowledge, training, skills and expertise acquired in his or her own practice of one profession or calling. There was no suggestion that any one profession or calling invariably had all of the right answers to every problem that might arise at any time in the case. The views of each member of the team must be expressed and then reviewed in the light of the views of all other members of the team. In the event of disparate views there must be reconciliation or one must be selected in preference to the other or others after full discussion and evaluation of all of the factors involved in the case.

In the same way that it was generally accepted by those who testified in relation to this area that no one discipline always had all of the right answers to every problem in every case, it was clear that no one person, regardless of profession, calling, knowledge, training and experience, could claim to be the infallible source of correct decisions at every stage of every case.

17. *I RECOMMEND THAT every report or instance of child abuse be investigated and managed and treated by a team or teams of qualified persons. The local children's aid society shall have the primary responsibility for the creation of the team or teams to deal with the various aspects of each case. In some aspects of the case the team may be comprised solely of employees of the children's aid society, but preferably it should have representation from such other organizations, professions, callings, agencies, institutions and authorities as may be necessary to provide protection and care to any child involved in the particular case.*

RECOMMENDATION #18

Kim's case raised a particular problem touched on in part by Mr. Carter when he said Mrs. Harvey told him he had been removed from the case for "ethnic" reasons.

It must be recognized that in Canada and Ontario the population is composed of people from many backgrounds, from various geographic areas in Canada and the world, from various races and cultures, with a variety of social, economic, educational and other differences. Dr. Bates touched upon some of these differences and he had some suggestions as to what might be done to overcome some of the difficulties arising from such differences.

Dr. Bates, in uncontradicted testimony, spoke of the various levels, as it were, of conduct toward or treatment of children which might be tolerated by communities or areas. I understood him to say, and I would accept, that there are differences in those levels even between communities in one country and certainly between various countries and between various larger regions of the world. What one country might accept as being acceptable conduct by a parent to discipline a naughty child might be regarded as unacceptable conduct and, therefore, abuse of the child if it were to occur elsewhere.

Accordingly Dr. Bates and others, such as Mr. Charko, suggested that some social workers dealing with incidents or reports of child abuse should receive some special training to enable them to treat or deal with the special problem of abuse allegedly inflicted by parents who have been raised elsewhere. This is over and above any problems of language which, in some cases, may also contribute to the difficulties faced by the social workers.

I am fully aware that any such suggestion must be viewed in practical terms. I would think that the demographic features of the community served by a children's aid society would indicate the extent or range of any need for social workers with such special training and skill. Thus, if a substantial percentage of the population of the community was composed of families headed by adults who, as children, were raised in one foreign country, it would seem that the children's aid society serving that community in Ontario should strive to have social workers with some knowledge or awareness of the language and customs of that foreign country. Conversely, if only one family in the community was headed by a parent raised abroad as a child, it would be unreasonable to urge the local children's aid society to employ a social worker with knowledge and awareness of the language and customs of that one parent's country of childhood. In that latter instance the society might properly draw upon outside forces, perhaps those of the Ministry or another society, made available in keeping with another recommendation of this Report.

Of course the overall resources of the local children's aid society must be considered in the light of the demands of the community thereon. It may be that, regardless of the number of parents in a community who were raised in a particular foreign country, the incidence of abuse by such parents does not merit the full-time employment of workers with special skills, knowledge and understanding of the language and customs of that foreign country.

Thus, I am prepared to accept the thesis of Dr. Bates' observations subject to the practical considerations or limitations.

18. *THEREFORE I RECOMMEND that each local children's aid society seek to employ social workers who, by reason of their special skills and knowledge of the languages and customs of the countries of origin of persons or families resident in the community but who were not raised in Canada, are especially qualified to assist in or manage cases or reports of abuse involving such persons and families.*

RECOMMENDATION #19

I have written of the need for the "team" approach to cases of abuse. I have suggested that each children's aid society should be responsible for the creation of a team of its workers as its own child abuse team to fulfill its mandate under The Child Welfare Act. I have suggested too that each children's aid society should seek the formation of more broadly based teams in the community.

The testimony upon the Inquiry overwhelmingly satisfied me that no one profession or calling is the sole and the infallible custodian of all current wisdom and expertise in the field of child abuse. The witnesses, I think without exception among those whose testimony addressed the matter, spoke of the need for the establishment and maintenance of teams to deal with the problem of abuse. Such teams, they said, should be composed of representatives of all professions, callings, disciplines and agencies which in any way might assist in cases of abuse. They said each case of child abuse, actual or reported, should be discussed and considered by the multi-disciplinary team functioning in the community.

Since The Child Welfare Act imposes upon the Ministry and children's aid societies the statutory duty to care for and to protect children it is my view that it is the local children's aid society, assisted and encouraged by the Ministry, which should assume the prime responsibility for the establishment and function of such multi-disciplinary teams. The co-operation of others will be necessary to achieve success in that endeavour.

There was testimony upon the Inquiry that in 1976 such a team was organized in the City of Sarnia and the County of Lambton. It seems that the Society assisted in the formation of that team and participated in its activities. However, at least until the spring of 1978, the Society did not assume any position of appropriate importance among or recognition or acceptance by other bodies represented upon that team. The functioning of the team may have been unduly affected by the rules and regulations of the administration of the hospital about which it seemed to be organized. Its functioning may also have been affected by some incidents which led to the Society being held in rather low esteem by others who participated in the team's activities.

In my view it would be desirable for the formation, maintenance and function of such multidisciplinary teams to reflect local conditions and resources of personnel, facilities and services. Nonetheless, the purposes of such a team are too important to permit what may be the petty idiosyncracies of perhaps only one unusually influential member thereof to govern the direction and thrust of the team.

There must be recognition that the representatives of the local children's aid society have the primary or dominant local responsibility for the care of the child, but at the same time there should be provision whereby other members of the team might ask for a review of any decision made by the representative of the children's aid society upon the team. Perhaps the review might be initially by the local director of the children's aid society with an avenue for further review by the appropriate field consultant or specialist of the Ministry assigned by the Ministry to advise, superintend and inspect the children's aid society. Such a procedure would avoid the unfortunate effect of an autocratic representative of the children's aid society upon the team and an ineffective local director of the children's aid society unable or unwilling to disagree with that representative even for good cause.

In this day of modern technology there could be almost immediate referral to the Ministry even during any period of local review of any decision. So I would suggest that, if a review of any decision be sought, the decision should not be implemented until completion of the review unless the Ministry's field consultant otherwise directs, even by telephone, because of the particular circumstances of the matter.

The participation of other persons or organizations in such multi-disciplinary teams may come about only by reason of direction from other ministries or branches of government. Therefore the Ministry should request such other ministries or branches of government to include in such direction provisions requiring other participants to accept the contrary opinion of the representative of the children's aid society or to follow the review procedure and to be bound by the result thereof.

The authors of the Garber Report recognized the need for such multi-disciplinary teams.

Mr. McCabe, interim local director of the Society from May to August, 1978, was a witness upon the Inquiry. He spoke generally of his observations to say:

> "I think - I have got the feeling from the comments made by those who have preceded me in the interim people who were directly sent from the Ministry that the relationship with the probationary services, the police and the health services were not as good as they might have been. I think that's a judgement that could be made about other children's aid societies too; I don't just select this one.
> I would say that steps have been taken already here to improve those relationships and I've personally been involved with meeting some of the police and with the probationary services and others on staff are continuing to meet with health services.
> Now, I would really emphasize the importance of close working relationships on teams or committees or whatever in terms of the prevention of this kind of thing in any community."

Dr. Turner also spoke of the need for inter-disciplinary teams.

Both Mr. McCabe and Dr. Turner spoke as well of the need for communication within a children's aid society and the establishment of a child abuse team within the individual society.

The establishment of multi-disciplinary teams with recognized standards for their operation should ensure a full, free and frank exchange of information. That exchange should be prompt and should not be long after the event. Disclosure of information by a member of such a team to other members of the team should not be nor be treated as being a breach of any confidence under which the information was obtained, but disclosure beyond the team should be prohibited or restricted to the same degree as the initial disclosure other than to members of the team might have been prohibited or restricted.

19. *I RECOMMEND THAT the Ministry seek the active co-operation of other ministries of government responsible for the regulation of professions, callings, institutions and authorities the practice or function of which may in any way relate to child abuse so as to ensure the establishment and function of multi-disciplinary teams. Each children's aid society shall be responsible for the institution of proceedings necessary for the formation of such team or teams as may be required to serve its community or communities. Each such team shall develop its own practices and procedures recognizing the dominant responsibility of the children's aid society and the Ministry to protect and care for children. It should be made clear that, provided it is made for the purpose of the team's consideration of a particular case, disclosure of information by and among persons serving on such a team shall not be nor be deemed to be a breach of any confidence that might otherwise attach to such information.*

RECOMMENDATION #20

It is convenient for me here to comment upon the formation and operation of the child abuse team within the children's aid society, the team composed of its own workers.

In concluding her testimony and responding to counsel's request that she express any recommendation she felt should be made in this Report, Mrs. Lo said it would be helpful if a group of workers were involved in any case of abuse, even from the earliest stages, to determine plans and goals for the case.

Mr. Zwerver in his response to the same type of question said:

> "...Investigating and carrying child abuse cases is a very stressful and onerous responsibility. The very lives of children are a worker's responsibility. Workers need and are entitled to all the support possible to carry out those responsibilities. I believe that that means that only workers who are seasoned and specially trained should have the responsibility of investigating complaints of physical assault or injury to a child and that wherever humanly possibly, and I stress possible, although I think it's extremely important, two workers should go out on the initial call and this will provide support to the workers who go out and also minimize the role confusion for one worker to be supportive to the family as well as authoritative in an investigative fashion. We heard reference made, I think by Mrs. Farina and Mr. Heath, to the problem of role confusion. Workers carrying validated child abuse cases need to provide the primary service to the child and his family and that means that someone has to coordinate the child abuse case at all times. One worker must be designated that responsibility. When this happens a great deal of time and energy is required to coordinate the activity of support personnel, not only within the Agency, but also

> support personnel in the broader communities whose energies and expertise are brought to bear to work with the family and the children of that family. What this then means is that only a very small case load can be carried by one worker at one time, probably no more than seven or eight cases. Flowing from that there must also be built into the Agency a support structure for that worker to get input quickly when necessary and consistently all the time. This means that when a worker has a particular need or is dealing with a crisis situation like a child abuse case, and there tend to be many crises in child abuse cases, there must be someone designated within the Agency with whom that person can communicate and from whom the worker can expect support and whatever assistance is required, whether this be the worker's supervisor or a designated senior staff person within the Agency. Without that kind of support that responsibility cannot be carried out adequately."

In my view those two responses, from two persons at or near opposite ends of training and experience and expertise in child abuse, represent a distillation of a common opinion. I assume that Mrs. Lo's comment was based largely, if not entirely, upon her experience in Kim's case. In that case there was no "team" approach and there were no recorded or defined plans or goals. Mr. Zwerver's comment was much more broadly based and comprehensive.

Mr. Zwerver's comment set forth in a few sentences the gist of much of the testimony of others. Work upon child abuse cases is stressful and onerous. Workers on such cases require support from others, both inside and outside the children's aid society. They themselves require special aptitudes, knowledge and experience. If possible two workers should be assigned to the initial investigation of any case so as to separate as much as possible the investigative and later management phases of the case.

There was an abundance of testimony upon the Inquiry as to the desirability of children's aid societies assigning specially qualified workers to abuse cases. The bulk of the testimony suggested that only such highly qualified workers should be assigned to such cases.

However, Dr. Turner, while adopting the thrust of that testimony, relaxed it somewhat. He was asked to comment upon Mrs. Lo's being assigned to Kim's case. His response was:

> "A. I presume in this situation Your Honour, that assign means giving considerable responsibility for the case and in that instance, I have of course very grave concerns. I'm not concerned that Mrs. ... a person such as Mrs. Lo might be a part of a case because certainly there are agencies who make use of this type of person as a resource, as an added input into a case but I am increasingly convinced and the evidence is overwhelming that we need our... absolutely most qualified people on these cases and that in no way is going to ensure that we won't make mistakes but it certainly is going to result in cutting down on mistakes being made.
> I would want to know and hope that Mrs. Lo received at least some basic orientation to the nature of child abuse cases and one thing that is very much on our side in these days is that because of the very high interest in this type of case, there is just an abundance of excellent literature around that would be useful for someone - even if they did no more than two or three weekends of reading on it would be at least a minimum orientation to it..."

. . .

> "...And I'm not saying that the Mrs. Los of this world cannot be helpful in this type of case but it's even more serious if we have assigned them to take on these responsibilities without preparing them for them."

In my view Mr. Zwerver was correct in his testimony to recognize the importance of the task of social workers assigned to child abuse cases. He said the very lives of children are the responsibility of those workers. He said such workers should be "seasoned and specially trained."

Dr. Bates spoke of the subtleties of child abuse that might be "easily missed by someone who is not conversant in a problem." That too is a valid concern.

In my view the general concept that cases of child abuse are serious, difficult, complex, stressful and demanding is correct. I accept the ensuing proposition that therefore they should be assigned only to fully knowledgeable and experienced and well qualified workers. I use the verb "assign" in the sense suggested by Dr. Turner, namely that assignment connotes the assumption of responsibility for the direction or management of the case or for the performance of important functions or the making of important decisions in the case.

I do share Dr. Turner's view that in appropriate cases, after acquiring some knowledge of the phenomenon of child abuse, qualified social workers, inexperienced in field work upon child abuse, might be assigned to specific tasks or roles in a case under the supervision of the senior worker who shall remain responsible for the entire case. By way of analogy, I envision a relationship not unlike that of master and apprentice or barrister and student-at-law. Without such a means of introduction to the practical application of knowledge gained in an academic setting or from literature no one could become an experienced worker qualified to assume responsibility for cases at some time in the future.

It would seem to me that service as a junior member of the society's abuse team could form a useful part of the society's in-service training of workers who, in the opinion of the supervisory personnel of the society, possess other attributes to enable them to become qualified to work upon cases of abuse.

In my view every children's aid society should have a group of its workers who constitute its own child abuse team and who participate in the function of the community's child abuse team. The society's child abuse team should be an elite group, men and women specially selected on the basis of aptitude, knowledge and experience to qualify them to provide the society's services to children and families affected by child abuse.

There should be provision for in-service training to ensure that the members of such a team are kept aware of developments in relation to child abuse cases and that they remain properly qualified. There should be provision for in-service training of other social workers selected by the Society's supervisory personnel so as to enable such workers to progress to membership in the child abuse team.

Upon the testimony as to the incidence of abuse it may very well be that the number of abuse cases will not require the full attention of any or all of the members of the child abuse team. If so that is advantageous in two ways.

Firstly it ensures that workers will have some respite from the stresses and tensions of child abuse. Testimony and other material discussed upon the Inquiry indicated that the demands of child abuse cases upon workers were such that workers should be relieved therefrom by assignment of other duties in whole or in part.

Secondly the highly qualified workers will have an opportunity to further the society's programmes to prevent abuse, which are of paramount importance to the ultimate solution of the problem, and to provide to other personnel certain parts of in-service training in abuse. In the same vein the members of the abuse team will be able to expand and refresh their own knowledge, by reading, study or attendance at seminars and the like.

The matter of personnel to be assigned to cases of abuse is a part of the subject matter discussed in the Garber Report with reference to Recommendation #19 therein. That recommendation calls for the provision, province-wide, of a protective service intervention "by persons who are classifiable as social workers, under the regulations of The Child Welfare Act and who have had specific training and experience in child protection, investigation, intervention, and apprehension." That statement as to the qualification of personnel is in accord with the tenor of the testimony upon the Inquiry.

20. *I THEREFORE RECOMMEND THAT each children's aid society select from amongst its social workers an appropriate number of persons to form the society's child abuse team. The social workers so selected shall be qualified for such assignment by reason of personal aptitudes, knowledge, skill and experience especially required to deal with all phases of child abuse cases. One or more members of that team shall be readily available at all times to provide service to existing or new cases as required. That team shall be assigned to provide service to all cases of abuse for which the society is responsible. Primary responsibility for an individual case will be assigned to an individual member of the team after discussion of the case by the team. One member of the children's aid society's management or supervisory staff shall be assigned as the resource person to whom the worker primarily responsible and the associated team of the society's workers may look for support or advice in case an emergency arises when normally desirable conferences cannot be convened, and who also will attend such regular conferences in relation to the case. Active service upon the team shall be rotated among the society's properly qualified social workers. Members of the team should be assigned to other duties as well. Less qualified social workers shall receive in-service training with the team so as to attain proper qualification and appointment to the team in due course.*

RECOMMENDATION #21

Testimony upon the Inquiry demonstrated the necessity for prompt and thorough investigation of all reports or cases of abuse. Kim's was a case where the investigation was neither prompt nor thorough. That deficiency contributed to the final sad result.

Dr. Singh asked Mr. Khattab to conduct an investigation in March, 1975. Mr. Khattab confined himself to conversation with Jennifer Popen. He made no investigation in any real sense. He did not even make a report upon his conversation with Jennifer Popen.

In June, 1975 the Sarnia Police Force was not prompt in its responses to Dr. Jumean's telephone call. Almost a day went by before the police contacted the Society. The Sarnia Police Force had done nothing to inquire about or to ensure Kim's safety in the meantime. The police left the matter in the hands of the Society and conducted no independent investigation of any of the contents of Dr. Jumean's conversation with Staff Sergeant Allan.

In June, 1975 the Society responded promptly to information from the Sarnia Police Force. However the response was limited to only the most initial phases of a proper investigation. Further investigation was needed. That need was recognized. Nothing was done.

From September, 1975 to February, 1976, after another injury brought Kim to their attention on August 31, 1975, the Sarnia Police Force and the Society were again involved. The police investigation appears to have been sketchy. The Society, represented by Mrs. Harvey and Mr. Carter, conducted virtually no independent investigation because of their acceptance of Mr. Higgins' statements purporting to limit the Society's contact with Jennifer Popen and Annals Popen.

All in all the court proceedings arising from Kim's suffering and injuries proceeded without adequate investigation by anyone. The prime responsibility lay upon the Society which, by section

6 (2) of The Child Welfare Act, was bound to perform certain duties, including:

> "(a) investigating allegations or evidence that children may be in need of protection;
> (b) protecting children where necessary;
> (c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;"

Both Dr. Turner and Dr. Bates in their testimony stressed the importance of investigation of all incidents or reports of abuse. The purpose of such investigation is not necessarily to support proceedings against parents, as by a prosecution under section 40 of The Child Welfare Act as was undertaken against Jennifer Popen and Annals Popen. Nor is the purpose necessarily to support an application by a children's aid society to obtain custody of a child, as the Society sought to do in respect of Kim.

The investigation should be broad enough to enable its results to be available for use upon any such prosecution or application if it were thought necessary to institute any such proceedings. But the prime purpose of the investigation should be to obtain information which will be helpful in preventing further instances of abuse to the same or other children in the family and in enabling the children's aid society and other social or community agencies to assist the family and protect the child.

Dr. Singh's request to Mr. Khattab in March, 1975 embodied that concept. He asked that there be an investigation of "the environmental and social status the [Popen] family lives in."

Dr. Turner is his testimony spoke of the need for investigation to enable those responsible for the treatment or management of each case to be in possession of accurate information. That information is needed to provide a proper basis for the necessary assessments and decisions to be made from time to time during the case. Such assessments and decisions might relate to such matters as the gravity of the situation, the probability of the occurrence of any particular outcome of the case and the steps or procedures to be taken or instituted to achieve a desirable result. Dr. Turner spoke of a social history or psycho-social history of the family as being an essential part of any such investigation.

Dr. Turner spoke of the need for the responsible agency in each case to determine the full nature of that case. He said that agency should be able to assess the strengths and limitations of the case. To do so it would have to consider what information it already had, what further information was necessary or desirable and what information might be available upon investigation.

He said that in many instances information is obtained too late to be useful in the particular case. Kim's was an example of that. Information about Jennifer Popen was not obtained until after Kim's death. He said that the agency should know that one of the problems in cases of abuse is that information is often, but not always, available and sometimes, though available, is not obtained.

As Dr. Turner testified to that effect I could not help but think of how appropriate his words were to Kim's case. A comparison of the testimony upon the Inquiry with the testimony upon the trial of Annals Popen upon the charge under section 40 of The Child Welfare Act and with the testimony upon the hearing of the Society's application for custody of Kim demonstrates Dr. Turner's testimony.

The paucity of the information acquired by the Society in relation to what was available had there been an adequate investigation by the Society was demonstrated by Mr. Lovatt's statement in testimony upon the Inquiry that:

> "...at that time [February, 1976 after Annals Popen was found guilty upon the charge under section 40 of The Child Welfare Act] we did not know too much about the background of this girl [Jennifer Popen]."

His use of the word "too" before the word "much" was gratuitous. He might better have acknowledged that the Society knew little, if anything, about Jennifer Popen. He continued to say he had been shocked that Annals Popen rather than Jennifer Popen had been found guilty. He said Mrs. Harvey and he decided that the Society would place its emphasis upon Jennifer Popen despite the result of the trial. One reading Mrs. Lo's recordings would not know that she was privy to any such decision. Nothing in the files of the Society reflect such a decision.

Detective Inspector Hill was able to make available to the Inquiry an abundance of material which, without undue effort, would have been available to the Society in 1975 and early 1976. That material related to Jennifer Popen's background.

The only apparent excuse for its not being known to the Society in 1975 and 1976 was that the Society had been prevented from seeking it out because of Mr. Higgins' restriction upon Mr. Carter's work. Mrs. Harvey at one point in her testimony was involved in the following exchange of questions by counsel and her responses thereto:

> "Q. Yes, you see I'm trying to get a handle on the priorities for the case as you saw it in the Fall of 1975, and the suggestion in your testimony so far has been that it was a big priority to get the Judge to make an order so that the child would be officially under your care. Do I understand that correctly?
>
> A. Yes, after we had the child in our care then the second priority would be to ensure that she stayed in our care.
>
> Q. And up until the time that you got that order the need to actually get it predominated over any need to do further investigation or further groundwork, is that what you're telling us?
>
> A. If we could have done the investigation and groundwork that would have been as important as getting the case to the court because the two things go together.
>
> Q. Yes.

A. You cannot separate them.

Q. That's right.

A. They would have gone together, but we were somewhat handicapped.

Q. You weren't able to do that and so the only thing that you were striving to do was actually get an order.

A. I wanted to get an order so that we could get the lawyers out and the C.A.S. in.

Q. And what I am attempting to do is understand it from an experienced supervisor's point of view. I think you just put it in a nutshell there in your last statement that you wanted to get control of the case as opposed to other parties that were interfering.

A. Yes, we wanted to be able to get in there and get some work done for this family.

Q. You had missed basically six months from the beginning of August to the end of February?

A. Yes, it was a dreadful waste.

Q. When you could have done a lot of work for the family.

A. Yes."

At another point in her testimony, when asked about the climate surrounding the court proceedings up to and including February, 1976, Mrs. Harvey had said:

> "A. Well, for one thing, you have had testimony from Mr. Carter that he was experiencing difficulty in interviewing the Popens. We were not able to get in there and do the work that we were supposed to be doing.

Q. Investigation of the Popen house?

A. Yes, and working with the parents and finding out more about them, which is what one does."

Kim's was a case which, in my view, demonstrated the unfortunate results which might flow from inadequate investigation. Even apart from the entirely inexcusable lapse from June 17, 1975 to September, 1975, during which time there was no investigation in respect of Kim, the Society did nothing of a substantial nature to investigate the circumstances of Kim's family after September, 1975. That lack of investigation continued after February, 1976, when the Order supposedly so desired by Mrs. Harvey was issued. To use Mrs. Harvey's words, Mr. Higgins was "out" and the Society was "in." Even then the Society did not avail itself of the opportunity to obtain information which was quite easily and readily available, but was not, so far as I am aware, known to the Society until the Inquiry was undertaken. Such information certainly was not a demonstrated factor in any decision relating to Kim made by the Society during her lifetime.

I am satisfied beyond any doubt that the absence of prompt and thorough investigation by the Society in 1975 and 1976 was one of the most serious factors contributing to Kim's death. In that regard it was exceeded only by Mrs. Harvey's decision that Kim was to be returned to her parents even in the absence of an adequate investigation.

Mrs. Harvey said that it was not until later, I presume she meant after Kim's death, or at least after February, 1976, that she learned that the Society might have applied to the Provincial Court (Family Division) of the County of Lambton to avoid any impediment which Mr. Higgins sought to place in the way of investigation by the Society's personnel.

I am not clear as to what she felt might be accomplished by such an application or as to her belief that the Court had jurisdiction to entertain it. I would have serious concern about the efficacy or propriety of any order appearing to require a parent in the position of Jennifer Popen and Annals Popen from September, 1975 to March, 1976 to submit to "quizzing," to use the verb attributed to Mr. Higgins, by investigators on behalf of an adversary such as a children's aid society or police force.

It may very well be that skilled counsel for the children's aid society might gain an advantage from that sort of attempt by opposing counsel to limit investigation. The only advantage would seem to be to obtain access to the home to inspect the physical conditions therein.

The deficiencies in the investigation of Kim's case by the Society and the absence of practices and procedures to be followed supply another demonstration of the need for the enactment in 1978 of paragraph h of subsection 2 of section 2 and subsection 3 of section 6 of the present Child Welfare Act. I have dealt with that at greater length in my comment leading to Recommendation #15.

With ongoing review and amendment of the standards of services and the practices and procedures by the Ministry and the fulfilment of the Ministry's duties to enforce compliance therewith by the children's aid societies, we should be able to minimize the chances of another case life Kim's.

21. *I RECOMMEND THAT upon receipt by a children's aid society of any report or information relating to abuse or suspected abuse of a child the children's aid society must forthwith commence and diligently complete a thorough and orderly investigation. Procedures for the conduct of any such investigation should be devised by each children's aid society in a manner to satisfy or exceed standards therefor prepared or to be prepared and maintained by the Ministry. Those procedures should entail a prompt recording, in permanent form, of*

(1) the source, if known, and the contents of the report leading to the investigation;

(2) the preliminary results of the initial investigation;

(3) the assessment of those preliminary reports including such matters as the gravity of the case and the need for further investigation or other action;

(4) if further investigation or other action is required, the nature and purpose thereof and

(5) the assessment of the complete investigation and its results.

Like all standards those standards must be the subject of on-going review and revision, if indicated.

RECOMMENDATION #22

Having stated the obvious need for prompt, orderly, organized and thorough investigation of reports of abuse or suspicion of abuse there remains the question of the personnel who should be employed to conduct such investigations.

The testimony upon the Inquiry overwhelmingly supported the concept that child abuse in all of its facets was such a complex matter with so many subtleties and variations that only highly trained and experienced personnel should be involved in cases of abuse.

There was no suggestion that the investigative phase of any case should be handled by other than such highly trained or experienced personnel. There was testimony to suggest that the initial investigation and the assessment of its results could be among the most important phases of any case of child abuse.

In his comment upon the events of June 17, 1975 in relation to Mrs. Saul's call to see Kim, Dr. Turner expressed the hope that Mrs. Saul, even at that time, with the information then given to the Society, would have recognized that it was a critical case. He said virtually all of the indicators of a situation of high risk to Kim were present. There were reports of prior injuries and admissions to hospital which should have been verified immediately. There was the factor of repetition of incidents.

Dr. Turner spoke of the serious alarm that all of that should have caused to a social worker functioning adequately in the field. His testimony suggested that then, or very shortly thereafter, after investigation of the reports of prior incidents, consideration should have been given to the apprehension of Kim by the Society. Dr. Turner said it was a matter of judgement of the initial worker as to whether or not the child should be apprehended at once.

Dr. Turner emphasized the need for evaluation of the situation by the social workers initially assigned to a case. He said mere reporting, without evaluation and assessment, is not sufficient. Evaluation and assessment entail judgement.

I am satisfied that, from the very beginning of any child abuse case, specially trained and experienced social workers should be assigned to it. Less well trained or less experienced workers may be assigned as assistants in the case so that they too may obtain the field training and experience necessary to complement their academic training and education. That is one aspect of in-service training.

There may be instances in any children's aid society when such trained and experienced personnel are not immediately available to enter upon the initial investigation. That should not be cause to delay the commencement of the investigation which should then be undertaken by the most highly qualified workers available. In such an instance the initial workers should be relieved as soon as possible by fully qualified social workers.

Dr. Bates in his testimony suggested that children's aid societies should more often seek the assistance of police officers in the investigative stage of serious or difficult cases of child abuse. He based that suggestion upon his opinion that, by the very nature of their employment, police officers were among the most highly trained and experienced investigators in the community.

There was other testimony to the effect that responsibility for investigation of a report of abuse and thus possibly direct responsibility for the prosecution of criminal or quasi-criminal charges against a member of the child's family or the presentation of an application to declare the child to be a child in need of protection could create difficulties for the social workers of a children's aid society in the future management and treatment of the case. The suggestion was that the family might regard the personnel of the children's aid society as being responsible for the family's problems in such proceedings and thus might be less amenable to the efforts of those same social workers to assist and counsel the family after the conclusion of such proceedings. The result might be that the social workers would be less effective in the management and treatment stage of the case.

It is a natural extension of that to suggest that social workers of a children's aid society responsible for the investigation of any case and the prosecution of any charge against a family member or an application to court in respect of the child should be a separate group apart from the social workers who ultimately will treat and manage the case. Those latter workers require a rapport with the family which they may not be able to develop if they have been in the position of testifying in court seemingly against the family.

In my view that latter position of apparent conflict in the two roles of the workers, that of investigator and possible adversary and that of supportive, helpful and understanding advisor, is not confined only to cases of abuse.

22. I RECOMMEND THAT each children's aid society shall ensure that an appropriate number of its social workers, specially selected on the basis of aptitude, knowledge and skills, are specially trained to investigate reports and cases of child abuse and to report thereon promptly. Any such report shall contain the author's assessment or evaluation of each facet of the investigation together with recommendations as to what, if anything, might flow from the investigation and what further, if anything, might be necessary or desirable. Investigation of any report or case of child abuse should be entrusted only to such specially chosen and trained investigative social workers who may be assisted by other social workers who may be receiving in-service training in investigation of child abuse. The temporary absence of such specially trained investigative social workers should not delay the commencement of the investigation. It must begin at once with the most qualified social workers who are available and who should be relieved as quickly as possible. If its complement of social workers justifies or enables it to do so, each children's aid society should seek to ensure that the investigative social workers are not in direct contact with the family during the management and treatment of the case after finalization of any court proceedings arising from the investigation.

RECOMMENDATION #23

I recognize the validity of Dr. Bates' testimony as to the investigative expertise of police officers. There will be reports or cases of child abuse which may be beyond the investigative capability of social workers. If the social workers feel they lack the necessary skills the children's aid society should not hesitate to request assistance from the police. That should help to ensure an adequate investigation. That should help to protect the child and the community. The police must respond promptly and adequately to any such request.

Apart from difficulties of investigation there may be other circumstances which should lead to the involvement of police officers.

The nature of the abuse would be one such factor. Police should be informed of instances of certain types of abuse, but the classification of those types will depend upon the judgement of the social workers. Criteria for the exercise of such judgement should be developed by discussion among the children's aid society, the Crown attorney and the police.

It is my view that physical injuries as serious as Kim suffered in 1975 were such as would merit referral to and action by the police, but a report of abuse which related only to a failure of the child to thrive slightly less well than expected might not merit such a referral or action. Other abuse, such as sexual molestation, may, by its very nature, require such a referral as a means of protecting other children in the home or in the neighbourhood.

A children's aid society may also find that referral to the police is helpful in the establishment of the rapport necessary for its successful long-term management of the case. In establishing that rapport with the family the children's aid society must be careful not to denigrate the police in the eyes of the family.

In the event of any referral of a matter to the police the children's aid society should ensure that it is kept fully apprised of the investigation by the police and its results. The children's aid society still remains responsible for ensuring that all information needed for its purposes is obtained.

23. I RECOMMEND THAT in any instance of abuse or alleged abuse which, in the opinion of the child abuse team of the children's aid society, should be investigated by police officers the children's aid society should promptly inform the police force responsible for the provision of police services to the community and request its co-operation to conduct the investigation and, if deemed necessary, to gather particular information for the assistance of the children's aid society in its investigation, management and treatment of the case. The police must promptly assume conduct of the investigation and collection of information and must keep the children's aid society fully informed thereof. There should be a confidence between police officer and social worker to ensure a full exchange of information. This may require the Ministry to obtain the co-operation and support of the Ministry of the Solicitor General.

RECOMMENDATION #24

As written in relation to the preceding recommendation, the testimony upon the Inquiry contained reference to the special skills of police officers as investigators of allegations or incidents of abuse. It was suggested that local children's aid societies should avail themselves of those skills.

There was however some concern that police officers would be interested only from the point of view of gathering evidence to establish guilt and, thus, might not be prepared to investigate other facets of the case which would be of interest to social workers responsible for the long term management and treatment of the case.

I do not recall that this was expressed in so many words, but I gathered that the concern was that police officers, by reason of their training and experience, would seek to gather evidence to show the nature of the abuse upon the child and to identify the person or persons who inflicted it and the time, place and method of its infliction. It seemed to be suggested that other aspects of the aetiology of the abuse would be of no concern to police officers and thus would not be investigated by them. Such aspects might include the background of the parents, their psycho-social history as it were. They might also include other possible causative factors which indicated crisis in the home or that the child was, for some reason, a high-risk child.

I am not prepared to say that such concerns about the limitations of the interest of police officers are valid. For my own part I would hope that they are not. I am encouraged in that by the testimony that members of the Sarnia Police Force have been valuable participants in the function of a community-based child abuse committee in the City of Sarnia. There was other testimony that generally participation of police forces in such committees was desirable and important. I regard that as recognition that one of the functions of a modern police force is to prevent crime and breaches of the law. There was no testimony upon that latter point, but I take it to be common knowledge that crime prevention is a modern police function.

I mention that latter concern only to strengthen the basis of the second part of my next recommendation. If that concern is valid, that part of the recommendation will overcome it.

Local police officers can assist the staff of the local children's aid society in various ways, not only in investigations of cases of abuse. There was testimony upon the Inquiry to show that police officers having contact with families in performance of other police functions often acquire information which may be helpful to the children's aid society in dealing with those families in a variety of ways. That was one of the reasons given for the need for the participation of police officers in community-based operations such as child abuse committees.

It would seem to me that police participation in the operation of a child abuse team could, without too much difficulty, be expanded to make police investigative skills available to children's aid societies. I would think that police officers assigned to assist a children's aid society in a particular investigation, as well as their superior officers to whom they report and, if need be the Crown attorney, would be entitled to exercise discretion and refrain from laying criminal or quasi-criminal charges if it appeared that the best results, having regard for the child, the family and the community, would be achieved without such charges being laid.

If I be correct in that belief the police participation in such a local child abuse team could include that investigative element.

If I be in error in that belief or if the local police administration or Crown attorney feel obliged to prosecute every instance of abuse regardless of the effect of mere prosecution of the charge apart from any finding of guilt resulting from such prosecution, then I move to the second part of the next recommendation.

This recommendation assumes that the only inadequacy within the local children's aid society's ability to deal with abuse is in the area of investigative skills. An alternative to a request for investigative assistance from the Ministry would be a request for such assistance from the local police force. Such a request would be made upon the understanding that the investigation is only a part of the overall management and handling of the case and that the laying or prosecution of criminal or quasi-criminal charges should not inevitably in every instance follow if the investigation reveals abuse and identifies the perpetrator thereof.

If, for any reason, an understanding between the children's aid society and the police force such as I mention in the recommendation cannot be reached, the local society should employ its own investigative personnel. Those persons could very well be men and women who have retired or resigned from police forces. They need not be permanent employees of the children's aid society.

Bearing in mind that incidents or reports of abuse may occur at any time, the children's aid society should arrive at such an understanding with the local police force or arrange the employment of its own personnel so that properly skilled investigators will be immediately and always available to assist other employees of the children's aid society in the overall handling of the case.

While I have written of the possible involvement of police officers in the investigative phases of abuse cases it must be realized that investigation of cases of abuse cannot be limited to ascertainment of the fact of abuse and of the identity of the perpetrator of the abuse. Thus even persons who have had extensive investigative experience in criminal matters will require instruction with reference to information desired or needed for the further goals or purposes of investigation of cases of abuse including subsequent planning, management and treatment of the case by the children's aid society.

Dr. Bates in his testimony spoke of the need for the investigation to provide information which will be useful to those who are obliged to prepare and implement the plan for the management of the case and the protection of the child. He spoke of the need for information upon which to base assessments of the family and of the child. He said the investigation should seek information about the childhood and past history of each parent, about the relationship of the parents in their marriage or otherwise one to the other, their functioning in the community and their extended families and their relationships with the child and between themselves.

Dr. Turner had similar expectations of what might come from an adequate investigation. He spoke of the need for a psycho-social history of the family.

It was stressed in testimony upon the Inquiry that at no time during Kim's life did the Society, responsible for her care and protection, have sufficient information about the background of her parents. Upon the Inquiry such expression of opinion was largely, and I think deservedly, directed to an absence of information about Jennifer Popen. It might just as deservedly be directed to the lack of information about Annals Popen. The Society had made no adequate investigation such as Dr. Singh envisaged in March, 1975.

24. *I THEREFORE RECOMMEND THAT if a local children's aid society lacks personnel qualified and skilled in the techniques of investigation of child abuse, or if the assignment of its personnel to investigation of an incident or report of abuse may diminish the society's ability to deal with other facets of the case, or if the nature of the case is such that it is necessary or desirable that the police be informed of it, the society should enlist the assistance of the local police force to conduct the investigative phase of the case. In such an instance the assistance should be given upon the pre-arranged understanding that, despite what may be revealed upon the investigation, criminal or quasi-criminal charges will not be laid if they might prevent or hinder the successful attainment of an overall satisfactory* *conclusion to the case in the best interests of the child, the family and the community.*

RECOMMENDATIONS #25 and #26

Throughout this area, perhaps by reason of the very nature of Kim's case, the testimony and opinions of witnesses were directed towards incidents of abuse of children by parents or other members of the family. My remarks have been similarly limited although, subject to my remarks upon the adequacy of that particular portion of the 1978 legislation, I am prepared to have them apply to situations in which parents or persons having charge of children permit them to be abused by others.

An incident of abuse of a child by a member of the child's family or permitted by a member of that family would seem to me to be of the sort requiring the extensive and thorough investigation mentioned in the testimony. If the child were abused by a comparative stranger, such as a baby-sitter or teacher, or by an utter stranger, assuming the act was not permitted by a member of the child's family, there would not appear to be a similar need for an investigation into the family of the child, but rather it should be into the background of the stranger.

The following recommendations relating to investigative procedures assume that the investigation relates to an incident where abuse of a child was perpetrated or permitted by a member of that child's family.

There was testimony as to Jennifer Popen's feeling of isolation even amongst other members of the extended family of Annals Popen in and around the City of Sarnia.

I accept the view inherent in the testimony that an investigation of an incident of abuse is incomplete until and unless it provides information which will enable those responsible for the management of the case to make accurate assessments of or decisions upon the myriad of situations and problems in the case and the facilities and solutions available to deal with them.

The investigation must enable those responsible for the overall management of the case to know more than that the child was abused and that the abuse was inflicted by a particular person. Those matters in themselves are important, but more information is needed. Among that additional information would be such things as:

(a) What is the relationship between the child and the abuser?
(b) Why was the child abused?
(c) What will prevent a recurrence of such an incident?

Determination of the relationship between the child and the abuser would not usually require a great deal of investigation.

Determination of why the child was abused and of what may prevent a recurrence of abuse may require a great deal of information. Those who are conducting the investigation will not necessarily be required to make such a determination, but they will require knowledge of the information which is required to enable others to make the determination. That information will involve the psycho-social history of the family supplemented by some information about the child and his or her position or status in the family.

In the second of the two recommendations which follow these comments I call for a probing investigation of the child's family to enable the best decision for the care of the child to be made.

It is in this area where I find a deficiency in the provisions of section 29 of the legislation enacted in 1978. Section 29 empowers the court to require persons having charge of the child to attend for certain assessments. But the court may make such an order only after the child has been found to be a child in need of protection.

Elsewhere I express the view that it should be possible for the court to make such an order at any time during the proceedings and in respect of anyone residing in or frequenting the home in which the child lived or would live if returned by the children's aid society The results of such an assessment may assist the court in determining the issue of the child's need for protection.

25. *I RECOMMEND THAT those assigned to investigate instances or reports of abuse be aware of the use to which the results of that investigation might be put. To that end those who conduct such investigations will require special training to make them aware of the various matters in respect of which they must seek information. In brief they should be trained to prepare a psycho-social history of the family.*

RECOMMENDATION #26

26. *I FURTHER RECOMMEND THAT in every incident in which abuse of a child has been caused or permitted by a member of that child's family the investigation into the abuse must be probing, broad and comprehensive. It must seek to obtain information to enable those who must make decisions as to the future care and well-being of that child to make correct and valid assessments or diagnoses of the various factors in the case and thus to make appropriate decisions.*

RECOMMENDATION #27

In detailed elaboration upon those basic recommendations I want now to consider briefly some of the specific areas that witnesses suggested might be the subject of such an investigation. In each instance it is my opinion that, if the factual circumstances of the particular instance under investigation support such avenues of investigation or inquiry, the investigators should make appropriate inquiries.

In many instances the testimony now mentioned was given as a means of illustrating the views of the deponent that the presence of certain factors in or about a child's life and family might support a conclusion, even before any incident of actual abuse of the child, that the child might be a high-risk child, a child who was more likely than others to be abused.

One such factor allegedly present in Kim's life and family was the isolation of one or both parents in the community generally or in the setting of the extended family. There was testimony particularly as to Jennifer Popen's feeling of isolation within Annals Popen's family.

It was suggested that such isolation would interfere with or prevent the full use of community or family resources by the parent or parents affected. In short the presence of a sense of isolation was a factor that might cause a person skilled in the matter of child abuse to have concern for the safety of a child in such a family.

Dr. Bates gave several examples of situations affecting a particular child which might be factors to be considered in assessing whether or not that child might have been or might still be exposed to a higher than usual risk of abuse. He said it was possible to predict what types of children might be abused.

He spoke of the child whose parent or parents have unreal expectations of the child. The child is expected to be well, happy and well-behaved at all times, perhaps to demonstrate to the world how fine is the home in which he or she lives. He said that such a parent might regard any normal childhood behaviour, such as crying on occasion, rejecting food, soiling diapers or clothing or even having usual childhood illnesses, as being a reflection upon the ability of the parent to be a good parent. A child of that parent would be a high-risk child.

He spoke of the child who was unwanted by one or both of the parents. That child would be a high-risk child.

He spoke of the child who was wanted, but who was wanted for the wrong reasons. One such wrong reason would be to fulfill some need of a parent, such as to have a child who will be abnormal and perhaps achieve the parent's unreal expectation of the child, thereby giving the parent a sense of elation that he or she is a fantastic parent. He said that if, by chance, the child does so achieve those expectations, the parent probably will not abuse the child. If the child does not achieve the expectations, there is an increased risk that the parent will abuse the child.

He spoke of the difficult child, one who was difficult for perhaps one or more of several reasons. Such a child might be hyperkinetic, or have behavioural or learning problems, or suffer some illness or be mentally retarded. Such children are prone to suffer abuse.

He spoke of the premature baby who is taken from the delivery room to a high-risk nursery and thereby separated from the parents. Bonding does not occur between parent and child. Such a child is a high-risk child.

He spoke of the children who are different, perhaps because they are mongols, perhaps because they have some physical abnormality. Such a child is a high-risk child because the parent may view the child as testimony to his or her inadequacy to be a parent.

He spoke of children who remind the parent of something or someone the parent wants to forget, such as a former spouse or common-law partner. The child may have physical or other characteristics of that former spouse or partner. When the parent is angry with the child, the parent may strike out more because of the child's resemblance to the former spouse or partner. Such a child is a high-risk child.

I am confident that Dr. Bates recited only some of the types of children who, predictably, are more likely than others to suffer abuse. From the examples he gave it would seem to me that determination of whether or not a child is a high-risk child depends upon many factors. Some may be readily apparent and almost objective in nature. Others may be found only by careful and thorough investigation. These latter are subjective in nature.

Determination of that question can be made only by persons who have been well-trained with reference to abuse. Those who conduct the investigations will require special training so that they too are aware of what they should be looking for.

This is another recommendation which, if implemented, would provide greater benefit to the child if section 29 of the present legislation were amended to extend the range of persons who may be required to attend for assessment and to enable the court to make such an order at any time during the proceedings.

27. *I THEREFORE RECOMMEND THAT those responsible for the investigation of any report or incident of abuse be instructed specifically to make special inquiries and investigations to determine whether or not the child involved is, for any reason, one of any class or classes of children who may be high-risk children, children more likely than others to be abused. The investigators will require special training in this area, particularly in relation to the factors which are subjective in nature.*

RECOMMENDATION #28

Dr. Bates also spoke of other matters, not centred on the child, which might indicate a greater likelihood that the child has been or may be abused. These were related to the parents or one of them.

Some of his comments appeared to relate directly to Kim's case when he said:

> "...Do the parents appear inappropriate? Do the parents appear to be inadequate in parenting abilities? And how can a person who is married at age 13 or 14 really fulfill a role as a parent? It is very difficult when you have had a poor childhood before that, entered a marriage in early adolescence, not had time to mature, when one is going through puberty and then you are thrown into motherhood and you have missed so many stages of your life already. It all paints a picture of crisis and problems to come later.
> Now the majority of parents who abuse are not psychotic - perhaps one to two percent. A lot of them have severe personality disorders but the major problem rests on what I have talked about here."

As Dr. Bates spoke I thought of Jennifer Popen and her testimony as to her age, childhood and marriage.

This is another recommendation which will provide optimum benefit to the child only if section 29 of the present Child Welfare Act is amended as I suggest elsewhere to expand the group of persons in respect of whom an order as contemplated thereby might be made and to enable the court to make such an order at any time during the proceedings.

28. I THEREFORE RECOMMEND THAT those responsible for the investigation of any report or incident of abuse be instructed specifically to make special inquiries and investigations to determine whether or not one or both of the parents is or are inappropriate *or inadequate in any way, whether physically, mentally, developmentally, emotionally or otherwise. This too is an area in which the investigators will require special training and instruction.*

RECOMMENDATION #29

The testimony upon the Inquiry was that in many instances of abuse the parents who bring the child to a hospital or doctor for treatment do not have an adequate explanation for the injury suffered by the child. This was so in Kim's case in March, 1975, in August, 1975 and, finally and fatally, in August, 1976.

The testimony of medical doctors was that in many instances the particular injuries could be caused only, or at least most likely, by abuse.

It was suggested that an investigation of a report or instance of abuse would be incomplete without a thorough medical examination of the child.

In light of the forms of abuse which may cause impairment of the child's development, but which might not be revealed by a medical examination without further tests, it would seem reasonable that the medical examination be accompanied by such other tests as the medical personnel or other professional consultants retained by the children's aid society or the police investigators may recommend.

The very presence of conditions discovered by such examinations and assessments may assist in determining whether or not the child is in need of protection.

29. *I THEREFORE RECOMMEND THAT in every instance of abuse or suspected abuse those who conduct the investigation, whether they be personnel of a children's aid society or police officers, should ensure that the child is examined by a medical doctor, preferably one with special training in paediatrics and abuse and preferably in a proper facility for such examination, such as the doctor's own examining room or in a hospital. The examination should not be limited to a physical examination, but should include such other tests* *or examinations as the examining doctor may deem necessary to ascertain the development of the child and any impairment which may have been suffered. The medical doctor should be requested to express an opinion as to the likelihood that any injury or condition discovered upon such examination resulted from abuse of the child. If possible the parent or parents of the child should be present or available to give, if he, she or they wish, any explanation or supposed explanation for the injury or condition. Failing attendance of the parent or parents the investigators should inform the doctor or other person conducting the examination of any explanation given for the presence of the injury or condition. The medical doctor or other consultant should be requested to express an opinion as to the validity of any explanation in relation to the injury or condition discovered upon the examination.*

RECOMMENDATION #30

Examination of the child is needed to enable the development and implementation of any plan for the care of the child.

Upon the Inquiry much emphasis was placed upon the need for the physical examination of any child who had been abused. It was said that the Society was derelict in not arranging for the medical examination of Kim soon after her return to her parents in May, 1976 and at intervals thereafter.

That testimony seemed primarily to be addressed to physical examinations. However, there was testimony that some forms of abuse which might not be revealed by a physical examination can cause more severe damage to a child. It was suggested that in addition to physical examinations of an abused child there should be other examinations and tests to determine whether there has been any impairment of the development of the child in other ways.

Regulations made under The Child Welfare Act recognize the need for examination of children in care. Section 16 of Regulation 86 in force during Kim's lifetime required each child in care to be medically and dentally examined as soon as practicable after the admission of the child to care and thereafter at intervals of not more than one year. Psychological and psychiatric assessments and treatments of the child were to be provided "where necessary and available."

Section 1 of that Regulation defined a "child in care" as being "a person under the age of eighteen who is in the care of a society in a place other than the home of his parent pursuant to an order made under clause b or c of subsection 1 of section 26 of the [Child Welfare] Act or pursuant to an agreement under section 23a of the Act..."

Provisions quite similar to those of section 16 of Regulation 86 as it was in 1975 and 1976 are now set forth in Section 3 of Regulation 97 under the Child Welfare Act. However I am unable to find in the Child Welfare Act or Regulation 96 or Regulation 97 made thereunder any definition of "child in care."

In my view in Kim's case she was not, from the date of her return in May, 1976, a "child in care" for the purposes of Regulation 86 because she was no longer "in a place other than the home of [her] parent" pursuant to court order or agreement under the statute. Thus, neither the Act nor the Regulation cast any duty upon the Society to arrange any examinations of her. In any event the permitted interval of one year had not expired since Kim was medically, if not dentally, examined just prior to her return in May, 1976.

I have concern as to the sufficiency of the present Regulation in the context of a case such as Kim's. She had been seriously abused on a number of occasions and had been ill on others. There was testimony that an abused child or even one not earlier abused who has been absent from the home for a lengthy period is at unusual risk upon his or her return home and the risk is greatest during the first three months following that return.

Clearly examinations in any such cases after the child's return should be at intervals considerably less than one year. During the period of highest risk the child might be best protected by weekly or bi-weekly examinations.

Apart from the exercise of judgement as to the frequency of medical examinations to comply with the Regulation there remains the basic question as to the meaning of the words "child in care of a society." Without some definition in the Act or Regulations there may be questions as to when a child is in care of a society and thus when the society must arrange examinations to satisfy the requirement of the Regulation.

I appreciate that the latter may appear to be somewhat academic in nature and persons in the field may feel the term has a particular and accepted meaning. But Kim is dead. In part that came about because people assumed certain things would be done by others, but they were not and because they assumed that certain results would flow from certain events, but they did not. I prefer to be certain and to be precise. In my view the Regulation, if not the Act, should contain a definition of the term "child in care." It was felt necessary to have such a definition prior to 1978; I think it should be restored, but amended so as to provide that a child placed in the care and custody of a children's aid society by court order remains "in the care" of the society until expiration of the order and any extension or variation thereof even if the child is returned to live in the family's home at some earlier time.

Subject only to the foregoing the Regulation requires the society to arrange for medical and dental examinations of children "in its care." Testimony upon the Inquiry was that other examinations might be necessary to detect some injury or impairment not detectable by medical examination. I sensed that the witnesses were addressing themselves to emotional, psychological and psychiatric problems. The Regulation provides that "where necessary and available" psychological and psychiatric assessment and treatment will be provided for such children. The adjectives "psychological" and "psychiatric" may be sufficiently broad to encompass what the witnesses had in mind, but I would prefer to see an amendment to broaden the scope of assessment and treatment to include any assessment or examination of whatever nature may be indicated or recommended by the professional persons retained by the society.

Section 29 of the present legislation contains reference to a wide variety of assessments which may be obtained. That section provides for "medical, emotional, developmental, psychological, educational or social assessments."

In my view the expression "where necessary and available" is too restrictive. The word "available" immediately offends the principle of equality of service throughout Ontario which is discussed elsewhere in this Chapter. If the provision of psychological and psychiatric assessment and treatment were to be required only when such assessment and treatment were "available" children in communities in which a psychiatrist or a psychologist did not reside or practice or remain available would be at a disadvantage, less well served than children in other communities. That should not be. Witnesses spoke against it. I share their views.

Apart from clear-cut cases of larger communities in which services of psychiatrists and psychologists are readily available because of the presence of large general hospitals, when do the services cease to be "available." Is the criteria measured in distance? or in travel time? or in terms of the cost of travel? or in terms of the staff of the society to travel with the child?

All in all, in my view, the Regulation should not contain any reference to the service being "available" with the possible exception that it must be available somewhere in Ontario before the Society is obliged to arrange for such assessment and treatment of a child who has been abused. This should not restrict a society, if it deems it desirable, in arranging for assessment and treatment of a child at a location out of Ontario if such assessment and treatment cannot be provided in Ontario.

I am bothered by the word "necessary." There is no statement as to who is to determine when in the case of an abused child a particular assessment or treatment is "necessary" as opposed to being "desirable" or "recommended." In my view the psychological and psychiatric and other assessment and treatment should be provided if recommended by the physician or paediatrician examining the child as being in keeping with good practice in child care. Witnesses spoke of emotional problems for the child as being an almost certain result of physical abuse. They spoke too of such problems requiring long term treatment.

In my view children's aid societies should at least be encouraged, if not required, to provide thorough medical, dental, psychological and psychiatric assessment and treatment as well as any other assessment and treatment, including, but not limited to, those mentioned in section 29 of the present legislation, which its qualified and experienced medical and professional staff and consultants recommend.

30. I THEREFORE RECOMMEND THAT the Regulations made under the Child Welfare Act be amended as follows:

1. to define the meaning of the expression "child in care" so as to make it clear that the expression includes a child from the moment of apprehension of the child by the society or from the moment of any voluntary delivery up of the child to the society or from the moment of any order or agreement committing or placing the child to or in the care and custody of the society, whichever comes first, until the expiration of any such apprehension, delivery, order or agreement and any extension thereof. It should be clear that the child remains in the care of the society if the child is residing physically or visiting the family home prior to such expiration;

2. to require the children's aid society to provide medical and dental examinations and treatment of an abused child as soon as practicable after the child comes into the society's care and thereafter not less frequently than annually while the child remains in the care of the society with the provision that if, while in care, the child is returned to the family home the society shall provide such examinations not less frequently than bi-weekly for at least three months after the child's return home and thereafter shall provide such examinations as often as the child abuse team and the medical and professional advisors of the society may advise in keeping with good practice of child welfare; and

3. to require the children's aid society to provide for such medical, emotional, developmental, psychological, educational, psychiatric and other assessment and treatment of an abused child in the care of the society and after the child's return home as the child abuse team and the medical and professional advisors of the society deem desirable or advisable in keeping with good practice of child welfare.

RECOMMENDATION #31

There was considerable testimony as to the need for the physical examination of any child who has been abused. I have enlarged upon that to recommend other examinations to enable complete assessment of the child's development.

There was some testimony as to the benefit that might be gained if it were possible to require members of the family of an abused child themselves to be examined in various ways.

From the testimony upon the Inquiry I am satisfied that in Kim's case considerable benefit might have resulted if the Society had sought and been able to obtain examination and assessment of Jennifer Popen and Annals Popen to determine their adequacy as parents and whether or not there was in either or both of them some condition which might have indicated that Kim would be exposed to unusual risk in their home. Some indication of potential problems was available to the Society in March, 1976, had they seen fit to obtain, read and properly assess Dr. Curtin's report upon Jennifer Popen and Annals Popen. Unfortunately, that was not done by the Society.

In my view, if a child has been abused and has been found to be a child in need of protection, the child should not be left with or returned to the family unless and until satisfactory completion of all appropriate examinations of the child and of the members of the family or household who may be the cause of the existence of unusual risk to the child.

From Dr. Bates' testimony, I am satisfied that modern knowledge and skill, supported by information derived from examinations and tests, can detect the presence of conditions which constitute unusual risk for the child. Children's aid societies should take advantage of modern knowledge, techniques and skill.

Section 29 of the present Child Welfare Act does enable the court to "order the child and any parent of the child or other person...in whose charge the child has been or may be, to attend" for a variety of assessments.

In my view that provision should be widened. It should not be restricted to those "in whose charge the child has been or may be." I have expressed a similar concern in my comments preceding Recommendation #25. There may be other persons residing in the family home, such as older siblings, aunts, uncles, grandparents and friends, who, while not in charge of the child, constitute a real risk to the child. One such person may have been the direct cause of the child's earlier injuries.

31. *I RECOMMEND THAT the Ministry, through appropriate procedures, seek amendment of the* *__Child Welfare Act__* *so as to give a judge, hearing a matter thereunder in relation to a child who has been abused or found to be a child in need of protection, the specific authority to require the parents of that child or any person in loco parentis to that child or any person residing in the same home as such parents or person in loco parentis to the child to be examined physically and otherwise as the judge may direct for the purpose of determining whether the child might be at some unusual risk if left or returned to live in that home.*

RECOMMENDATION #32

Section 29 of the present legislation empowers the court to order certain persons to attend for certain assessments.

I have already recommended an enlargement of that provision.

Section 29 empowers the court to make such an order only after the child has been found to be a child in need of protection.

That then would seem to be sufficient from that time forward, but it may not be early enough.

In my view it should be possible for the court to make such an order at any stage of an application to determine whether or not the child is a child in need of protection. The results of any such assessment may be important in that determination.

It may be said that this is forcing a person to testify against his or her will. That is not unusual in civil proceedings where parties to litigation may be required to attend for physical or other examinations by doctors retained by parties in opposite interest. The application in respect of the child is in the nature of a civil proceeding.

In any event the life and safety of the child is more important. If examinations or assessments such as are contemplated in section 29 are of help in protecting the child, compulsion of a parent, or perhaps even one who may not technically be a party to the proceedings but who may, by reason of circumstances, be a threat to the child's safety, to attend for such examination or assessment is a small enough price to pay for the safety of the child.

There was further testimony that plans for a child's care should be developed and implemented as quickly as possible. In Kim's case, if section 29 had been in force in 1975, the Court could not have made the order contemplated in section 29 until the end of February, 1976, six months after she was apprehended.

Delays of that sort may be vital to the treatment and care of the child.

I do not suggest that the results of any such assessment should necessarily be admissible in evidence in any criminal or quasi-criminal proceeding resulting from any abuse of the child. I am concerned here with the well-being of the child now and in the future. I am not in this area concerned with any question of guilt or innocence or punishment or rehabilitation of anyone else.

32. *I THEREFORE RECOMMEND THAT the Ministry seek further amendment of section 20 of the Child Welfare Act so as to empower the court to make an order thereunder at any stage of an application to the court to determine whether the child is a child in need of protection.*

RECOMMENDATION #33

The testimony upon the Inquiry overwhelmingly supported the need for conferences of everyone involved in a case of child abuse to enable a children's aid society to achieve good results in that case. Thus, it is not enough that there be a team approach, but there must be conferences of those team members and, sometimes, others. Those others may be personnel of the children's aid society or they may be persons from other agencies or institutions in the community or beyond. Thus the decisions and resulting actions by the children's aid society upon any case will truly reflect the corporate decision of the children's aid society and not be really the result of one person's opinion. I recognize that, as in other walks of life, competing views and opinions may be expressed in any such conference and that the ultimate decision may have to be taken by a supervisor or even the local director of the children's aid society.

Kim's case was notable for the absence of conferences at its various important stages. Witnesses commented adversely upon that absence. Indeed there were virtually no conferences in relation to Kim.

Upon the basis of the testimony there are several points at which conferences should be convened. Each conference should be attended by persons appropriate to the particular topic to be considered.

The first such conference might be in relation to the initial assignment of members of the children's aid society's child abuse team to the case. In many instances initial assignment might be made by the senior staff member upon the team without any conference simply in the interests of expediency and prompt response to the report to the children's aid society. Thereafter, save and except in cases of emergency or crisis, decisions should be made in conference.

One such decision might relate to the selection of the member of the society's child abuse team to have primary responsibility for the case. That decision might be affected by factors relating to the case itself or relating to other conditions and other cases within the society. The report upon the first contact of the children's aid society with the case will have to be assessed. That assessment might indicate that the case will require particular skills and that might suggest the assignment be given to one social worker. However that worker may already be overtaxed. So alternatives must be considered.

Consideration of those alternatives might involve consideration of transfer of one or more cases so as to permit assignment of the new case to a desired worker. The whole team, everyone involved with all cases affected by any proposed transfer, should participate in the decision upon any proposed transfer so that the interests of all families and children involved in the cases are best served by the children's aid society.

Apart from questions as to assignment or transfer of duties to personnel there will be points in every case at which decisions will have to be made. Except in case of emergency where it is not practicable to do so, a conference of appropriate personnel, primarily the child abuse team and its direct support staff, should be convened in respect of each decision.

33. *I RECOMMEND THAT each children's aid society develop a procedure and practice whereby appropriate conferences of its personnel and others will be convened to consider all relevant factors and then to make decisions in respect of each case of child abuse. Decisions may relate to the assignment or transfer of responsibility for performance of duties or may relate to any stage or phase of the investigation, planning, management or treatment of the case. The requirement for such conferences should be clearly expressed in the society's manuals of practices and procedures. The Ministry should assist each children's aid society in this effort.*

RECOMMENDATION #34

The bulk of my most recent comment has related to various aspects of the investigative phase of any report or instance of abuse. In the preceding recommendation I have written of the need for conferences at various points in any case, including consideration of transfer of responsibility for the case within the children's aid society.

One point at which responsibility may likely be transferred would be the completion of the investigative phase of the case and judicial determination of any proceedings arising therefrom. However I do not wish to suggest that a transfer of responsibility should necessarily occur at that point or that it might not occur at any other time. I do want to comment upon the need for clear policies and procedures in reference to any transfer of responsibility of a case whenever it occurs or for whatever reason it occurs.

There was a considerable amount of testimony upon the Inquiry which was adverse comment upon the transfer of Kim's case from Mr. Carter to Mrs. Lo. One basis of the criticism was the absence of any conference to consider and then decide the matter. A second basis of criticism went beyond that. It related to the manner in which the transfer, decided upon by Mrs. Harvey, was then effected.

Dr. Turner in a portion of his testimony described some of the benefits accruing from a conference to discuss the proposed transfer of a case within a children's aid society.

It enables the worker presently upon the case to attend to some unfinished matters such as, perhaps, recording his or her activities and observations in respect of the case, the plan devised, the goals set out, the degree to which goals have been achieved, along with assessments, evaluations, opinions and recommendations.

It enables the worker to whom the case is to be transferred to be fully briefed. That avoids duplication of work and perhaps confusion in the minds of the family involved.

It enables review and possibly revision of plans and goals. It enables clarification of areas of uncertainty or possible misunderstanding. It enables an orderly transition and introduction of the new worker to the family. It enables discussion of what further information may be needed or desired for proper management of the case.

In Kim's case, even apart from the absence of discussion as to the advisability of any transfer from Mr. Carter or of any transfer to Mrs. Lo, which amounted to two decisions or at least two parts of one decision, there was no discussion between Mr. Carter and Mrs. Lo. Neither sought out the other to give or receive information or comment. So far as the testimony upon the Inquiry revealed, Mr. Carter did not even say farewell to Annals Popen and Jennifer Popen and Mrs. Lo was required to introduce herself to them.

Dr. Turner spoke of the benefits to be obtained "administratively and professionally and therapeutically" by a planned, orderly and recorded transfer of a case. It would seem everyone would benefit, including the family and the child. None of that was obtained in Kim's case.

The following is a corollary to the preceding recommendation.

34. *I RECOMMEND THAT each children's aid society in its manual of practices and procedures set forth the need for planning and completing the transfer of responsibilities for a case within the society. The manual should be clear and precise and set forth what is required and expected of each supervisor and worker involved in the transfer. It should stress the concern that service to and relationship with the particular family and every other family which might be affected by the transfer should be disrupted to the least extent possible. It should stress the need for the permanent records of* *the case to contain a resume of the reason for the transfer and what was done to effect it and how it was accomplished together with appropriate comment and assessment.*

RECOMMENDATION #35

One of the incidents in the handling of Kim's case which attracts perhaps the most severe criticism is that, from June 17, 1975 until August 31, 1975, the case lay dormant and unattended despite the professed concern of Mrs. Saul and Mrs. Harvey, known to Mrs. Dick, as to its serious nature and the need for prolonged service by the Society.

No one offered any reasonable explanation for that lengthy lapse. There was testimony as to the absence of written codes or manuals of practices and procedures within the Society. Mrs. Harvey suggested that in the circumstances of the Society there were well-known and established practices and procedures. The testimony satisfied me that there was no merit to that suggestion. In too many instances employees of the Society had to assume or guess as to what might have happened at various times or points in Kim's case. That was so even in relation to the simple question as to the whereabouts and handling of notes made by Mrs. Saul and Mrs. Dick on June 17, 1975.

The failure of the Society to render any services to Kim and her family from June 17, 1975 was not explained, but it demonstrated the absolute absence or the inadequacy of any system to regulate the orderly management of any case. Two workers wrote reports to their Supervisor. The Supervisor acknowledged the serious nature of the matter and its need for long-term service by the Society. But nothing was done to place or record those notes in the permanent records of the Society, to record the concerns expressed by Mrs. Saul and accepted by Mrs. Harvey or to provide any service to Kim or her family. No one knew or apparently cared about that lack of attention. No one did anything from June 17, 1975 until August 31, 1975 when Kim was again admitted to hospital.

Mr. McCabe in his testimony said that there was a need in the Society for an improvement of internal information systems to enable the administrative or management personnel to monitor what was happening in the Society. He felt the Society was not unique in that need.

Mr. McCabe suggested that depending upon the nature of each children's aid society the internal information system might be sophisticated or crude. He said that in any such system the purpose would be to indicate to everyone in the society that a particular file, marked in some special way, is one which, by reason of the nature of the case, is not to be dealt with, filed away or closed except after a conference including senior staff persons.

Mr. McCabe seemed to presuppose that a file would be opened. In Kim's case, not even that was done until September, 1975.

The testimony upon the Inquiry was overwhelmingly to the effect that, in addition to being difficult and complex, cases of abuse were among the most serious and important matters dealt with by children's aid societies and should be treated as such.

35. *I RECOMMEND THAT each children's aid society develop and maintain an internal information system capable of enabling the administrative, supervisory and management personnel of the society to know at all times the status of every current case in the society. This is especially so in relation to serious matters requiring service by the society over an extended period of time.*

RECOMMENDATION #36

It would seem to me that the successful application of an information system such as I mention in the preceding recommendation is dependent upon the preparation and retention of complete and accurate records upon which supervisors and others can rely.

The Society's records in Kim's case did not meet that test. They were not complete. They were not accurate.

Any worker who prepares notes upon observations made during involvement with a case and upon opinions, assessments or valuations of the case is entitled to be able to rely upon those notes being promptly, accurately and completely transcribed and entered and retained in the file maintained by the children's aid society in respect of that case. Similarly any other worker concurrently or subsequently involved with the case is entitled to be able to rely upon the transcription as being accurate and complete.

Much of the testimony referred to the interdependence of workers with children's aid societies and other community organizations and institutions.

Reference was made to a worker's network of contacts in the community and the development of mutual trust and confidence based on knowledge of each other's skill and experience. The same sort of trust would develop between or among workers for the same children's aid society. A worker may be prepared to accept unhesitatingly an opinion or statement expressed by one co-worker, but may not be so willing to accept an opinion or statement expressed by another.

If the transcriptions are inaccurate no one can rely upon them for any purpose.

To my mind one of the most disturbing elements of the conduct of the Society's affairs, apart of course from the real tragedy of Kim's abuse and death, was the absolute lack of reliability which could be given to the written material in and from the files of the Society. That lack of reliability took many forms.

One example was the absence, until September, 1975, of any available record of the events of June 17, 1975.

Another example was the recording made in September, 1975 which gave a false impression of what had happened between June 17, 1975 and August 31, 1975.

Another example related to disclaimer by witnesses as to some parts of recordings or as to the accuracy of recordings attributed to him or to her and to acknowledgement by one witness that she had caused some entries to be made apparently by another member of the staff of the Society.

Another example was the inconsistency of the recordings in the Family Services Department with those in Children's Services Department. That inconsistency was illustrated in the testimony of Mrs. Lo and Mrs. Kirby as to their meeting in early May, 1976 to discuss the important event of Kim's return to her home. Nothing in Kim's case was more important than her return. Nothing merited greater attention to care and accuracy. The records did not agree one with the other.

Another example was a combination of the written and oral reports to the Board of Directors of the Society and to the Ministry in December, 1977 and early in 1978 and a comparison of each of them with the others and each of the others.

Another example was the change in a document even after a photo-copy of it had been prepared for the purposes of this Inquiry. The original had been returned to the Society and later, upon the hearings, was introduced as an exhibit. It had been tampered with in the meantime.

All of those, together with others mentioned in the main portion of the Report, left with me, at worst, a concern about honesty or integrity, and, at best, a concern about care in the matter of recordings and, thus, by extension, in the very handling of Kim's case.

The unsatisfactory state of the Society's records had roots in several basic areas.

Dr. Turner spoke of what he felt should have been, but was not set forth in some specific areas of the recording. The root for that deficiency was the inadequate training and supervision of personnel.

As the testimony revealed, the history of the management of Kim's case by the Society was one of unsatisfactory performance or completion of routine tasks from June 17, 1975 until Kim's death about sixteen months later.

On June 17, 1975 Mrs. Saul correctly detected and was alarmed by the presence of indications of the possibility that Kim was a child in a high risk situation. She reported to Mrs. Harvey orally and in writing. But then she did no more. She did not make any inquiry to ascertain what was happening.

Dr. Turner expressed his belief that someone in Mrs. Saul's position should have done more than she did to establish the full nature of the situation in the Popen home and to record her evaluation or assessment of what that situation was. Dr. Turner stressed the importance of the first worker to have contact with a case. He felt that it was incumbent upon that worker to do more than merely report what he or she observed without evaluative comment.

I share Dr. Turner's view.

Dr. Turner expressed similar views with reference to other portions of the records prepared by Mr. Carter and Mrs. Lo. He said they lacked expression of opinion, judgement, assessment and valuation upon or in respect of the events or incidents observed or mentioned.

Notes made by Mrs. Saul and Mrs. Dick on June 17, 1975 lay unattended and unrecorded until September, 1975, their whereabouts unknown.

The root for all of that that was the absence of an appropriate system to ensure the prompt recording of material and the preparation of adequate reports.

Witnesses disclaimed the accuracy of some recordings attributed to them or were unable to attest that recordings attributed to them were correct transcriptions of their original notes. That too had its root in the absence of a proper system of preparing and recording reports.

In an organization such as a children's aid society where a number of persons may have access to one file because of involvement with particular facets of one case it should be relatively simple with modern technology to maintain a permanent master copy of transcriptions approved and accepted, as accurate and complete, by the author of the original notes on which the transcription is based.

In my view it is imperative that the Society develop a system to ensure the fidelity of the recordings of its personnel. That system may be complex or it may be simple, but it must be effective. It must ensure that the social workers are fully instructed and supervised in the art of preparing and recording not only a report of what they saw or heard, but also evaluating, assessing and commenting upon what they saw or heard and what, in their view, was missing or should be sought out or explained and why.

There was some suggestion by Mrs. Harvey that the Society had been criticized in the past, presumably by officials of the Ministry, because recordings were unduly lengthy. On the basis of the testimony I heard it would seem to me to be preferable that the notes contain too much, rather than not enough. It will be the responsibility of the supervisor, with the specific social worker, to excise any unnecessary material in the original copy.

The testimony upon the Inquiry showed clearly that while a social worker prepared notes intended to form part of the permanent record he or she did not check the accuracy of the transcription of those notes against the original notes written or prepared by him or her. The dangers in that are obvious. The absence or presence of one small word, such as "not," changes the meaning of a sentence.

That problem can be removed by the simple expedient of requiring the typist to return the original notes to the social worker who wrote them. That social worker would then be required to compare the transcription against the original notes, to make any necessary corrections or revisions and to sign or initial, in ink, the entire transcription and any correction or revision.

That may appear to be another statement of the obvious. Again, Kim's case was such as to show the need for the statement of the most elementary and obvious.

It was clear that some recordings were prepared long after the events or observations referred to therein. Mr. Carter's recording for the period from August 31, 1975 to February 29, 1976 was perhaps an extreme example. The entire recording for a period of virtually six months was prepared at one time at or about the end of that period. Mr. Carter in his testimony denied that the recording attributed to him and set forth in the file upon Kim's case in the Family Services Department of the Society was an accurate transcription of what he had prepared. He said the recording was inaccurate in form or style, but, to my mind more importantly, he said it was also inaccurate in content or substance.

That problem can be removed by simply requiring each worker to state in the particular notes the date on which they were prepared, then by requiring the typist to state in the transcription the date on which the notes were transcribed and, finally, by requiring the original worker to write in ink, and sign or initial the date on which the transcription was checked against the original notes and found to be in order or corrected or revised as the case may be.

That should ensure accuracy of transcription. But the supervisor should be aware of the recording and, to ensure such awareness, should be required to sign or initial the recording and to write the date of such signing or initialling, all in ink.

If a supervisor wishes to make some comment in or upon the recording it should be done in a similar fashion and acknowledged by signature or initial of the supervisor, in ink with the date thereof. The social worker or workers involved should similarly in writing acknowledge having read such comment by the supervisor.

A prominent weakness in the handling of Kim's case was the absence of any satisfactory record of the decisions which should have been made from time to time. There was no real recording of what the personnel of the Society perceived as the goal to be achieved in the case or as the means of achieving that goal. There was no real recording of any achievement of or approach to any goal or of any impediment to such achievement or approach. There was no real recording of what the Society perceived as additional information or material which should have been obtained or sought so as to enable proper management of the case.

In many ways that problem was rooted in the absence of conferences of concerned personnel at appropriate times in the management or treatment of the case when it was necessary that decisions be made. That in turn was rooted in the absence of an appropriate code of practices and procedures. Little was written. I doubt that much more was tacitly accepted as forming the Society's code of practices and procedures.

Each children's aid society, with the assistance and guidance of the Ministry and the Ontario Association of Children's Aid Societies, can produce and maintain a currently acceptable code or manual of practices and procedures. One such manual in respect of child abuse was produced in 1976. It was too late to be of any use in Kim's case. Others have since been in the process of production or have been produced.

I appreciate that each children's aid society functions in circumstances probably unlike those of all other societies. I appreciate that practices and procedures acceptable or required in one jurisdiction or organization are not necessarily acceptable or required in another. But each can learn from the others and from the Ministry and from the Ontario Association of Children's Aid Societies and adapt to its local conditions practices and procedures employed or tested elsewhere.

I am confident that children's aid societies are no more different one from another than are the communities in which they function. I am confident too that the municipal governments of those communities informally exchange information as to problems they have faced and what they have done in relation thereto together with copies of by-laws and other relevant documents. The appropriate ministries of government are available for advice and comment. Thus I am confident that any children's aid society, probably like most, unable for a variety of reasons to prepare an original manual of practices and procedures can obtain copies of other societies' manuals and, relatively easily, adapt one or more of them to its own local conditions.

36. THUS I RECOMMEND THAT each children's aid society ensure that its social workers are instructed in the art of preparing and recording reports for the files of the society and that those workers receive in-service training and instruction therein. Such instruction should emphasize that the recording should be more than mere administrative reporting of what was observed without any expression of opinion, judgement, assessment or evaluation thereof and expression of the perceived significance thereof to the overall plan for management of the case. The recording should contain reference not only to what has been observed, but also to what appears to be missing and what is desired or needed to enable the overall plan to be developed and implemented to successful conclusion. The policies and procedures developed or adopted by children's aid societies for the management and treatment of cases of abuse should require each worker having *any contact or involvement with the case to record promptly the time and nature of such contact or involvement and his or her observations, if any, upon each such contact or involvement and to express an opinion as to the nature of the case upon the basis of those observations. Each children's aid society should develop and insist upon adherence to a system to ensure that a social worker's notes are prepared promptly, transcribed promptly and correctly, and then, in effect, confirmed, as corrected or revised if need be, promptly by the social worker and then acknowledged by the appropriate supervisor. The system for the preparation of recordings should form part of the manual of the practices and procedures of the society. The procedures of each children's aid society should ensure the original accuracy of all recordings and that they are not later altered or tampered with. The Ministry's supervision and inspection procedures should contain elements to that effect.*

RECOMMENDATION #37

Witnesses commented upon the absence of a recorded plan for the management and treatment of Kim's case. In my view there was no such plan to record.

One of the most striking admissions of the Society's failure to protect Kim was that no arrangements were made for her to be examined medically or otherwise after her return home in May, 1976. That was the subject of adverse comment by several witnesses.

I have written of the benefit that may flow from medical and other examinations of the child as part of the investigation of any report or incident of abuse.

Dr. Duncan recommended that the Society retain a medical practitioner to examine a child regularly after the child's return home. Mrs. Kirby said that the child should be medically examined within a week or two of his or her return home and thereafter should be examined frequently. Dr. Singh spoke of the need for such a child to have frequent physical examinations by the family physician. He suggested the programme might begin during the time when the child's return home was being considered. Dr. Turner was surprised that the Society had not made any such arrangement and suggested a variety of ways that it might have been done.

The general trend of the testimony as to medical examinations was that, while nurses or others may have some training and knowledge in such matters, medical examinations intended to detect instances or suspicions of abuse should be conducted by qualified physicians with knowledge of and experience with the phenomenon of abuse.

Examinations by nurses and others would be helpful in a variety of ways, including deterrence of anyone tending to abuse the child, but ultimate and definite opinions as to the presence or absence of indicia of abuse should be formed only after complete medical examination of the child by a qualified physician and after any other examination of the child by persons qualified to perform such examination.

There was further testimony that any examination of the child might be hampered unless it were conducted in or with adequate facilities.

Medical examinations should be by a medical practitioner retained by the children's aid society. That practitioner should be expressly authorized by the society to discuss any of the results of any such examination with the child's family physician. Any such discussion should be for the purpose of exchanging medical information for the benefit of the child.

Having the medical examinations conducted by a physician retained by the children's aid society should avoid the problems mentioned by Dr. Bates as general observation and which were self-evident in the testimony of others. Those problems relate to difficulties encountered by some physicians in determining their duties and responsibilities, which may be or appear to be in conflict, when they treat children of families all of the members of which are their patients. The problems may be rooted in crass financial concerns, as were expressed upon the Inquiry, or they may result from a base of more ethical or philosophical dimensions, as was also expressed.

To illustrate the latter I analogize to the problem faced by a social worker investigating a report of abuse, then proceeding in court against the parents as a result of the investigation and all the while and later seeking to serve as trusted counsellor and advisor to the family and to establish a good rapport to achieve a good result in the management and treatment of the case.

37. I THEREFORE RECOMMEND THAT, as part of any plan to return a child to his or her home after an incident of real or suspected abuse, the children's aid society should arrange for the complete medical examination of the child immediately prior to the date of the return and for frequent complete medical examinations of the child after such return. The medical examinations should be *conducted by a physician retained by the children's aid society. The first such examination after the return should be within two weeks of the return and subsequent examinations should be at intervals of not more than two weeks unless the child abuse team of the society, in conference with the examining physician, determines otherwise. All such examinations should be conducted in a hospital or in the office of the examining physician, in that physician's discretion having regard to the facilities required. The examining physician should be expressly authorized in his or her discretion to release information about the child's health to the physician who is the family doctor. Any such medical examination should include such tests as the examining physician may deem necessary to determine the child's development and any impairment thereof.*

RECOMMENDATION #38

There was some testimony upon the Inquiry as to the contribution to the management of a case of abuse that might be made by the physician attending to the family's medical needs, the family doctor.

Ironically, the first such testimony came from Dr. Jumean of whom I have been quite critical. Apart from his telephone calls to the Sarnia Police Force and The Lambton Health Unit on June 16, 1975 he contributed nothing to Kim's case. In the vernacular, Dr. Jumean did not practise what he preached.

Nonetheless I find some merit in Dr. Jumean's suggestion that the family physician should continue to be involved with the child's case even while the child is in the care of a children's aid society who may engage the services of another physician or paediatrician to provide medical services to the child. The gist of Dr. Jumean's suggestion was that there should be an exchange of information between the family doctor and the doctor or doctors engaged by the children's aid society. That would seem to me to be beneficial to the child and family in a variety of ways.

The family doctor may be able to give information not shown upon hospital charts or material otherwise available to the physician appointed by the children's aid society. That information might go beyond matters relating to the health of the child and family. It might relate to other observations by or opinions of the family doctor.

Looking forward to the possible return of the child to the family, the doctor appointed by the children's aid society can similarly expand upon whatever health records may have been prepared in respect of the child while in the care of the children's aid society so that the family doctor will be aware of any problem and how it was perceived and treated.

Perhaps reflecting upon his own absences during Kim's lifetime and what occurred during those absences, Dr. Jumean suggested that in the event of an incident of abuse or suspected abuse during the family doctor's absence, the children's aid society should write to the family doctor to give particulars of the incident. He suggested that possession of that information would better enable the family doctor to assist in the case. In light of his own actions I do not think that suggestion merits much attention. Dr. Jumean did not read reports from those who "covered" for him or from consultants retained on his behalf. It is another bit of irony that one of those consultants was Dr. Singh who was also retained by the Society and who, conceivably, if Dr. Jumean's suggestion were adopted, would be the author of any letter to him as Kim's family doctor.

To some degree Dr. Singh's testimony supported the concept of a continuing involvement of the family doctor after intervention by a children's aid society. Dr. Singh's mind at the time appeared to be directed towards the need for frequent medical examinations of children in the care of the children's aid society and for an exchange of information before any child is returned to the parents. He said:

> "...once the child is taken up at Children's Aid they should have frequent physical examination by the family physician of that particular child, more follow-ups and report to the physician back and forth before the child is given back to the parents. The Children's Aid Society should probably get the physician involved to have a complete physical examination;.."

38. *I RECOMMEND THAT the child abuse team of each children's aid society, as a part of its programme to manage and treat a child abuse case, establish and maintain an ongoing relationship with the physician who provides medical services to the child's family as the family's doctor. If the children's aid society engages another physician to provide medical services to the child it should instruct and authorize that physician to obtain the child's prior medical records from the family physician* *and other sources and, if the child is to be returned to the family home, to supply to the family physician the child's medical records for the period during which the child was in the care of the society. That exchange of information may lead to the family doctor's more easily recognizing situations of risk for or abuse to the child and thus to earlier and more beneficial report thereof to the children's aid society.*

RECOMMENDATION #39

Mrs. Hewitt voiced a similar or complementary opinion as to the benefit to be derived from the maintenance of a relationship between the children's aid society and persons in the community who had been involved in a child's welfare. I gathered she felt that, as in Kim's case, doctors, nurses, police officers, neighbours and others who were involved in a variety of ways, perhaps as witnesses available to be called by the children's aid society upon its application for custody of a child, in the process whereby a child came into the care of a children's aid society, the children's aid society should consult with or inform those same persons in relation to any intention to return the child to the parents.

In many ways the following recommendation, based on that line of testimony, is an extension of the concept of involvement of children's aid societies in community based child abuse teams and with the child's family doctor.

39. *I RECOMMEND THAT the child abuse team of each children's aid society, as a part of its programme to manage and treat a child abuse case, maintain an ongoing relationship with those who, in any way, have assisted or may assist the children's aid society in relation to the case. Among such persons I would include anyone who had reported the case or the suspicion of abuse to the children's aid society or who willingly co-operated with the society in the provision of assistance or information. If for no reason other than common courtesy, they should be aware of the result of their reports or actions. More importantly they may be a means of preventing any recurrence of abuse, perhaps by keeping the society aware of any unusual circumstances or observation or perhaps merely as* *a result of the parents' knowing from testimony or otherwise that persons in the community are concerned about the welfare of the child. They are more eyes and ears of the society in the community.*

RECOMMENDATION #40

The circumstance of Kim's return to her parents' home in May, 1976 is of concern to me in that it appears to have been an instance of virtual defiance of the Order made by Judge Nighswander in March, 1976.

When the Society's application for custody of Kim was heard in February, 1976 Mrs. Harvey requested that the Order be to place Kim in the care of the Society for only two months. Until then any statement in Court on behalf of the Society and the understanding of Mr. Carter, the social worker directly in charge of the case, was that the Society would seek custody for six months.

However, Judge Nighswander decided to decline Mrs. Harvey's request. He placed Kim in the care and custody of the Society for six months. The uncontradicted testimony of skilled and experienced social workers was that Judge Nighswander's reasons for his judgement were strong.

In early May, 1976, barely two months after Judge Nighswander's judgement, the Society, by procedures I have criticized elsewhere, decided to return Kim to her parents. That return was effected in late May, just three months after the Order was made.

Thus, in effect, the Society reverted to the position requested by Mrs. Harvey in February, 1976 and refused by Judge Nighswander in strong terms.

Admittedly Judge Nighswander, in his testimony, said he was not offended by that action and that he felt it was within the power of the Society to make such a decision and to take such action. He felt that it was within the power of a children's aid society under The Child Welfare Act to place a child physically in any place so long as the child remained in its custody. That would include the home from which the child had been removed and the return might be effected even on the day on which the order of the court placing the child in the custody of the children's aid society was made.

To my mind that is wrong in principle particularly in an instance such as Kim's where the judge hearing the application specifically declined to accept the suggestion by the society that the order be for a shorter term than was eventually ordered. Judge Nighswander had also stated what I regard as being virtually conditions to be met to his satisfaction before Kim was to be returned. They were not met.

Mr. Higgins' testimony included his recommendation that, when a child has been removed from the family home because of abuse and has been found to be a child in need of protection because of abuse, an abused child should not be returned home except upon the express order of a judge.

I endorse Mr. Higgins' views.

Implementation of the following recommendation would require the judge's approval even of visits intended as a means of introducing the child to the home before any return. A child may be injured or killed by abuse even during such a visit.

40. *I RECOMMEND THAT the Ministry, through appropriate channels of government, seek to obtain an amendment of the Child Welfare Act so as to provide that, in any instance where a child removed from the family home has been found to be a child in need of protection because of abuse or because of conditions in and about the family home which may constitute an unusual risk for the child and has been placed in the care and custody of a children's aid society, the child may not be returned to the family home prior to the expiration of the order placing the child in care of the children's aid society except by an order of a judge made on application and upon notice to such persons as the judge may direct. The judge should be empowered by the Child*

Welfare Act to impose such terms upon the return of the child as the judge deems necessary to protect the child.

RECOMMENDATION #41

Dr. Bates in his testimony spoke of a study he had conducted in Australia. He said that he had found that the crucial period with regard to death from abuse was within one to three months of the return of a child to his or her home after a period of hospitalization or foster care. He said that was the critical period of readjustment. He felt that the majority of such deaths could be prevented.

It was perhaps only coincidence, or it may have been some innate intelligence, but a remark attributed to Police Constable Wyville was a statement to like effect. He was said to have commented to Mrs. Harvey, in the presence of others in February, 1976, that if Kim were returned to her home she would be dead within three months.

Kim's death did occur within three months of her return to her home. That return was on May 27, 1976. She died on August 11, 1976, about two and one half months later.

I am well aware that other factors, including Karie's birth in July, 1976 and any difficulties or complications arising therefrom, may have had substantial bearing upon Kim's case. However the testimony upon the Inquiry did not disclose that any particular or special effort was taken to ensure Kim's safety from May 27, 1976 or from Karie's birth in July, 1976. Kim's safety and protection were entrusted to Mrs. Lo who lacked the necessary training and experience and skills. Mrs. Harvey provided inadequate intruction to and supervision of Mrs. Lo in this task.

41. *I THEREFORE RECOMMEND THAT when a child who has been removed from the family home as a child in need of protection is returned to the family home the children's aid society should be especially vigilant and alert in its supervision of the child's care in the family home during the period immediately following the child's return. The children's aid society should be alert to the* *possible effect upon the child's care resulting from other events occurring at or about the time of the child's return. That period of especially close supervision should be not less than three months.*

RECOMMENDATION #42

Somewhat similar considerations may apply in other instances where a child returns home after a lengthy absence, even if the absence was for a reason not related to abuse. The children's aid society may learn of the situation through its participation in a community child abuse team or it may be specifically advised of it by some other agency or person.

42. *I RECOMMEND THAT if a children's aid society learns of the return or proposed return home of a child after lengthy absence from the home even for reasons not related to abuse, the society should ensure that every possible effort is made to assist and support the child's parents in the re-introduction of the child to the home. This would be a part of the society's programme of prevention of abuse.*

RECOMMENDATIONS #43 and #44

Dr. Bates in his testimony described some types of circumstances surrounding families and children which might provide a basis for concern that a child in such circumstances may be a "high risk" child, a child more likely than others to be the subject of abuse. From that background he suggested that the role of public health nurses might be expanded to enable them to have greater authority and responsibility in the field of child abuse.

The testimony upon the Inquiry was to the effect that Mrs. Kuly was not empowered to insist that she see Kim. She had no authority to examine Kim in any way to determine whether or not the child had been abused.

The thrust of Dr. Bates' suggestion, as I understood it, was that public health nurses be required to be alert to notice circumstances which might indicate that a child is exposed to a high risk of abuse. He felt that the duties of public health nurses gave them an unusual opportunity to be able to recognize and assess such circumstances. Those circumstances might relate to abuse suffered by a parent as a child. They might relate to the physical or emotional health of a parent, including improper use of or addiction to drugs or narcotics or alcohol. They might relate to the child. They might relate to events such as the birth of another child and the difficulties surrounding it, including pre-natal and post-partum periods. They might relate to the family's position in the community. They might relate to the state of the marriage of the child's parents.

Public health nurses were in contact with Kim's family, particularly Jennifer Popen, even before Kim's birth. They were again in touch with Jennifer Popen in relation to Karie's birth. They made "new-baby" visits to Kim's home and tried to assist and advise Jennifer Popen in her duties as a mother. They performed their own specific duties and, informally, co-operated somewhat with the Society.

It is that latter area that requires improvement. I gathered from Dr. Duncan's testimony that steps have been taken to that end. There also was some concern expressed that the public health nurses must establish a good rapport with the families they visit. If they do not they are not as effective in performance of their own major role.

It would seem that public health nurses can be useful members of the local inter-disciplinary teams dealing with abuse. They should be entitled to discuss with those teams children or families in respect of which they have concerns about abuse. They should be empowered to examine any child in respect of whom they have such concern. Such examinations, admittedly not definitive, might help to detect or prevent abuse. They can provide a useful service as another friendly visitor to the families they serve. They are another human resource in the community to support children's aid societies and to support and assist and encourage parents in dealing with problems. They are persons who, by reason of the nature of their primary duties, are among those who may have early opportunities to observe and assess circumstances which indicate possible dangers for children and thus to ensure that steps are taken to try to prevent the dangers from materializing into abuse to the children. If abuse does occur they may have an early opportunity to observe its effects upon a child.

In Kim's case Dr. Duncan testified that, in retrospect, Jennifer Popen's request for a letter from The Lambton Health Unit should have been made known to the Society. She said that the Society would now be informed of any such request. I regard that as merely an extension of the co-operative exchange of information that should exist among the various agencies and organizations whose aims and objectives encompass the welfare of children. I gather Dr. Duncan felt that such a request was a circumstance to be considered by the Society which had the basic responsibility for Kim's care and safety.

In that sense the public health nurses can complement the children's aid society workers both in efforts to prevent abuse and in some phases of investigation if abuse does occur.

Dr. Duncan in her testimony spoke of a means developed in the City of Sarnia and the County of Lambton to overcome the problem arising from the absence of legislative authority for public health nurses to examine children such as Kim. That occurred after Kim's death. It involved an application to the Provincial Court (Family Division) of the County of Lambton for inclusion of a special provision in the order upon any application for a declaration that a child was a child in need of protection. The special provision would authorize the public health nurse to undress and examine the child to determine whether or not there were any signs or marks of abuse. Dr. Duncan said several orders made by the Court have included such a provision.

That sort of arrangement is probably very effective, but it would seem to me that it would be advisable to ensure that there is adequate authority for any such order.

I am presupposing that in any instance where such an order is sought the agency or local health unit by which the public health nurses are employed will have been made aware of the particular case through participation in the local community's child abuse team. I also presuppose that the local health unit will have agreed to conduct the examination and to report thereon as required by the court.

Dr. Duncan's testimony was not clear as to the stage of court proceedings at which such an order might be made by the Court. Mr. Carter, who had expressed concerns in this area similar to those of Dr. Duncan, spoke of the order being part of the order for supervision of a child. If that be so, it would seem that the main purpose of the order would be to serve as an instrument to prevent further abuse of a child who has been found to be a child in need of protection.

Bearing in mind the testimony as to the benefits to be derived from an integration of the efforts and services of community agencies and from the provision of such services even prior to any final determination of the child's need for protection, it would seem desirable that there be a means for such an order to be made at any time, whether prior to or as part of such final determination.

43. *I RECOMMEND THAT co-operation between public health nurses and social workers employed by local children's aid societies should be regulated by formal documents setting forth the need for and the basis of such co-operation. Children's aid societies should seek the active assistance of public health nurses as a means of observing conditions in any home in which a child, about which a children's aid society is concerned in any way, resides. Public health nurses must inform local children's aid societies of any circumstance which causes them to have any fear that a child might be in some danger of abuse even though there be no physical evidence of abuse. Public health nurses must assist local children's aid societies when requested and, by appropriate legislation, should be specifically authorized in the performance of their general duties in or about the home or family of any child to physically examine the child if the children's aid society has expressed any suspicion or concern that the child may be in any danger of abuse.*

RECOMMENDATION #44

44. *I THEREFORE RECOMMEND THAT the Ministry seek appropriate amendment of the Child Welfare Act to authorize or empower a judge, upon an application under that statute, to order and direct that public health nurses be given free access to any child named in such application for the purpose of examining such child as one means of ascertaining whether or not the child has been abused and/or as a means of preventing abuse to the child and supervising the care of the child.*

RECOMMENDATION #45

Witnesses expressed concern about the admissibility of evidence and the courts' use of it when it was admitted. That concern may arise as a result of inadequate presentation of cases by or on behalf of children's aid societies. The adversary system exists. Skills of advocacy are important. Knowledge of the law is important.

That was demonstrated in Kim's case. Witnesses upon the Inquiry testified that the staff of the Society lacked knowledge of The Child Welfare Act. I have expressed the opinion that a more knowledgeable staff would have brought about a more thorough investigation, preparation and presentation of the Society's application. They would not have made certain wrong assumptions as to the effect of the result of the proceedings against Jennifer Popen and Annals Popen under section 40 of The Child Welfare Act. They would not have so meekly abided by Mr. Higgins' attempt, successful as it turned out, to limit the Society's work.

Others before me, including witnesses upon the Inquiry and the authors of the Garber Report, have expressed the need for children's aid societies to be able to obtain legal services in relation to their duty to protect children.

As an introduction to my next recommendation, I can do no better than to repeat and endorse another of the recommendations set forth in the Garber Report. It is the twelfth recommendation in that report. It is as follows:

> "12. That in all child abuse court proceedings the CAS must be represented by counsel; in all uncontested cases the CAS should have access to legal opinion, in order to fulfill its protection mandate."

I would note that in Kim's case the Board of Directors of the Society had made monies available for legal services if Mr. Lovatt felt such services were required. That action was taken in direct response to Mrs. Harvey's request for such assistance in cases of abuse. So far as I am aware Kim's was the only such case at the time. Unfortunately it was the same Mrs. Harvey who had earlier declined to attend or send anyone in her stead to attend a seminar for court workers employed by children's aid societies. Without adequate reason she felt confident of her own abilities. Unfortunately too Mr. Lovatt had not concerned himself sufficiently with Kim's case and he relied upon Mrs. Harvey's management of it. Thus funds which, if used, might have protected Kim, lay unused.

In my view therefor the recommendation in the Garber Report must be strengthened. The first portion which, if implemented, would require that counsel represent the children's aid society in any court proceedings arising out of any incident of abuse would appear to be adequate if it were extended to ensure that counsel were retained and consulted during the investigative and preparatory stages of any such incident. Even the most highly skilled counsel cannot have much effect if the investigation has been mishandled and if all available evidence has not been obtained and considered prior to the trial or hearing. Similarly counsel cannot succeed if the attendance of witnesses has not been ensured.

I cannot envisage any situation of abuse or suspected abuse where court proceedings of some sort would not at least be considered as one possible result of adequate investigative and other actions by the children's aid society involved.

In my view it is imperative that the staff of the children's aid society have ready access to legal advice at all stages of any case of abuse or any report of suspected abuse.

I would liken the desirable availability of legal advice to children's aid society personnel to that which is provided to police officers by the Crown Attorney. Mr. Lang advised the Sarnia Police Force with reference to Kim's case. Witnesses upon the Inquiry spoke of the investigative skills of police officers developed by training and experience. If police officers, so skilled, enjoy and use access to legal advice during their investigations and before any decision is made upon any consideration of charges which might be laid, it seems to me only logical and reasonable that the personnel of a children's aid society should have a similar benefit of legal advice before any decision is made in respect of courses of action open to the society in any case or report of abuse.

Having said that, there remains the problem of ensuring that the personnel of the children's aid societies exercise their access to legal advice.

In Kim's case the opportunity for legal advice was present, but unused. So far as the testimony upon the Inquiry disclosed, no one of the Society, including Mr. Lovatt, Mrs. Harvey and Mr. Carter, even considered, let alone discussed in any meeting, consulting a solicitor to represent the Society or to give any advice to the personnel of the Society in relation to any aspect of Kim's case. That was so despite Mrs. Harvey's successful request to the Board of Directors of the Society that funds be made available for legal services in abuse cases.

It would seem to me therefore that any procedures to be developed for the handling of cases or reports of incidents of abuse must contain some provision whereby the decision to consult or not to consult a solicitor will be the decision of the appropriate team of workers, whether composed only of personnel of the children's aid society or supplemented by others from outside the children's aid society, who are involved in the matter at its various stages, whether investigative or later.

It is not too much to expect that something akin to minutes of the meetings of such teams be prepared and retained as a part of the permanent record of the matter. Like other records they should be prepared promptly after the meeting and their accuracy should be confirmed, as by requiring each person participating in the decision to initial the original.

In the case of the Society, minutes of meetings of teams of workers were prepared, but some could not be found when sought by Detective Inspector Hill for use on the Inquiry. This disappearance was not explained.

The particular circumstances of each community and each children's aid society will probably determine the basis upon which legal advice will be available to the personnel of the children's aid society. Whatever the basis may be it must be such as to enable legal advice to be available at all times. Testimony upon the Inquiry showed that incidents of abuse often occur as a result of crisis. Crisis can occur at any time. The discovery of injury to a child can occur at any time.

Kim's case demonstrated at least the last of those statements. Her admission to hospital on August 31, 1975 occurred at about one o'clock in the morning of Sunday in the middle of a long holiday weekend. Mrs. Dick was able to resolve or avoid problems, but the testimony upon the Inquiry was such as to suggest that there could have been then a situation in which any worker for a children's aid society would have appreciated ready access to legal advice.

Kim's case also demonstrated the need for legal advice and representation in cases of abuse even if the matters are unopposed. In the end, in February, 1976, Kim's parents were not vigorously opposing the Society's application, but, in the many ways I have mentioned elsewhere in the Report and in this Chapter, the absence of legal advice to and representation of the Society contributed to an unfortunate result.

45. *I RECOMMEND THAT each children's aid society make arrangements to have legal services available to its personnel engaged in child abuse matters. If reasonably possible those services should be available at all times to meet emergency situations in such cases. The social workers of each children's aid society must be made aware of those arrangements and encouraged to avail themselves thereof in every instance. Procedures governing the handling of cases or reports of abuse should provide that, except in cases of emergency where full conferences are not practical, decisions to use or not to use such services should* be made at conferences of the appropriate team or teams of workers and duly recorded as part of the permanent record of each case. If any court proceedings arise as a result of any instance of abuse the children's aid society must be represented by a solicitor even if the proceedings are unopposed.

RECOMMENDATIONS #46 and #47

Upon the Inquiry there was some limited testimony as to the size of the Society in relation to other children's aid societies in Ontario. From that testimony I am prepared to assume that many of the other societies are not greatly unlike the Society in the matter of area and population served. There was little testimony as to the incidence of abuse in any particular jurisdiction and there was testimony as to the doubtful validity or accuracy of whatever statistics might be available.

I am prepared to assume that the incidence of child abuse in the City of Sarnia and the County of Lambton was not greatly different from that in other cities and counties in Ontario. The testimony was that Kim's was certainly the only serious case of abuse and perhaps was the only case of abuse being serviced by the Society during her lifetime.

On that basis I think it is clear that the Society was not during Kim's lifetime in a position to develop and maintain a team of workers whose duties, at least for specific periods of time, would be limited to abuse cases, let alone the single facet of such cases related to the investigative phase thereof.

Probably few if any of the children's aid societies in Ontario would be able to afford such teams.

There was testimony as to the need for workers with special aptitudes, training, skills and experience to be used in all phases of cases of abuse. It was said however that service upon such cases was very demanding and that workers should be relieved from such duties and assigned to other less demanding duties from time to time.

From all of that, however desirable it might be in theory, it is not practical to suppose that many of the children's aid societies in Ontario would have sufficient need or demand to justify the establishment of a team of workers assigned solely to abuse matters in some form of rotation, some being specifically assigned responsibility for investigation of reports and some assigned responsibility for other phases of prevention, treatment and management of cases.

It may very well be that only some of the reported cases of abuse will be such as possibly to create difficulties in the sense of social workers employed by a children's aid society having to perform two roles which, to the families involved, might appear to be conflicting. This would perhaps be one of the areas requiring immediate evaluation or assessment by the workers first assigned to the case. That evaluation or assessment would require prompt review and consideration by the appropriate conference of workers and supervisory staff, including, if needed for resolution of differences of opinion, the local director of the children's aid society.

Bearing in mind the practical problem of maintaining a special team of workers to work on reports or cases of abuse in the territory or constituency served by each children's aid society it would seem to be incumbent upon the Ministry to provide to the children's aid societies some specific support and assistance in the area of child abuse. The Ministry should have personnel, with all of the necessary aptitudes, training, skills and experience, who might be assigned to respond immediately, by physical attendance in the local community if need be, to any request by a children's aid society for assistance in any phase of a child abuse matter.

I want to make it clear that I have not discussed my following comment with Detective Inspector Hill, who served with me upon the Inquiry, nor have I discussed it with any other member of any police force to learn any of the details of function of the Criminal Investigation Branch of the Ontario Provincial Police. Subject to that limitation, it is my view that that Branch's ability to quickly deploy highly skilled police officers to all areas of Ontario to direct or conduct the investigation of serious crimes or allegations of serious crimes provides a useful model for what I visualize might be done by the Ministry.

This must all be viewed in the context of the present statutory, and previously informal, requirement that children's aid societies report all incidents or reports of abuse to the Central Registry of Child Abuse. It must also be viewed in the context of the Ministry's avowed intention to conduct full operational reviews of each children's aid society not less frequently than quinquennially.

Thus, cases of abuse being among the most serious matters dealt with by children's aid societies, it is likely that every report or case of abuse to or in each children's aid society will come to the attention of the Ministry's personnel and, if necessary, the personnel of the local children's aid society will be required to support or explain assessments, evaluations, decisions and actions upon each case and to bear responsibility therefor.

My concept of the overall organization of the forces to deal with abuse involves local and provincial personnel.

Locally each society should have a sufficient number of its personnel with qualifications of aptitude, training, skills and experience in the field of child abuse to enable the local society to deal at least with the immediate emergency of a report or incident of abuse. That facility should be always available locally.

Mrs. Dick's presence and actions on August 31, 1975 are such as I envision as the basic responsibility of the local children's aid society. In relatively calm and serene reflection hours, days or months later, one may question whether what she did was entirely correct and complete. But she was effective in securing Kim's immediate and continuing safety, physically in the hospital and, *de facto*, in the care of the Society.

Each local society should have among its personnel social workers with the necessary qualifications, again of aptitude, training, skills and experience in the field of abuse, to enable them to conduct at least the preliminary investigation of each report or case of abuse and then to evaluate or assess the results of such preliminary investigation. It would then be incumbent upon those social workers, in conference with supervisory staff of the society, including perhaps the local director, to determine whether or not the personnel of the local society possessed sufficient qualifications to deal successfully with all of the difficulties which might reasonably be expected in the particular case.

A permanent written record of the preliminary investigation and of the subsequent conference, complete with evaluation and assessment of the results of the investigation and the proceedings of and decisions made at the conference, shall be prepared at once and placed in the files of the children's aid society.

If it is the decision of the local children's aid society that its personnel are sufficiently qualified to deal successfully with the case they shall proceed to do whatever they deem to be necessary to investigate, manage and treat the case. In addition an immediate written report shall be made to the Central Registry.

If it is the decision of the local children's aid society that its personnel are not sufficiently qualified to deal successfully with the case the senior member of the staff of the children's aid society responsible for the case shall forthwith, by telephone and thereafter promptly in writing, advise the Ministry of the situation with as much detailed information as is then available and request the assistance of the Ministry's personnel to investigate, manage and deal with the case.

That then leads to consideration of the facility to be available in the Ministry to respond to such requests from local children's aid societies. In the light of unreliable statistics and the lack of knowledge as to the real frequency of abuse there is not much point in even trying to estimate the volume of such requests.

In my view that service from the Ministry should be available to children's aid societies twenty-four hours of every day. This is simply an extension of the recommendation that each children's aid society have staff available to deal with emergencies at any and all times, twenty-four hours a day.

I do not contemplate that fully organized teams of the Ministry's workers will be on duty around the clock. I do contemplate however that the

Ministry will maintain an emergency telephone number through which a children's aid society, believing it needs assistance in an emergency situation, may quickly discuss the matter with a qualified member of the Ministry's staff who, on regular duty or on a stand-by basis as the case may be, will be able to give assistance and advice by telephone or even by personal attendance if the situation seems to require it and it is reasonably feasible.

I would think that in most such cases advice or assistance by telephone would suffice. Personal attendance of the Ministry's staff would not often be required, but it should be available if required.

Any such request to the Ministry for assistance or advice should be followed as soon as possible by an exchange of written messages between the local children's aid society and the Ministry confirming the basis of the request and the Ministry's response to the request.

While personal attendance of the Ministry's staff at a local children's aid society may not often be required in immediate response to telephoned messages to the Ministry, such personal attendance might often be required during various phases of any case, whether in the investigative or management and treatment phases, including preparation for various court proceedings and the subsequent hearing or trial.

In my view once the local children's aid society has acknowledged its inadequacy to deal with a particular case or report and has sought the assistance of the Ministry it should be required to follow the advice or direction given by the Ministry's personnel unless and until such advice or direction is withdrawn by the same or more senior personnel of the Ministry.

That is the major reason for my belief that, as soon as practicable, any such advice or direction, however given, should be reduced to written form. Such a procedure should reduce the possibility of misunderstanding.

The children's aid society should have a means to obtain review of any item of advice or direction. The review should be by the superior of the Ministry's employee who issued the advice or direction which is questioned.

I envisage that the Ministry's personnel can be of especial assistance to smaller children's aid societies in relation to the investigation and to the planning, management and treatment phases of any case of abuse. The conflict of the two aspects of the duty of the workers for the children's aid society is apparent.

As an investigator he or she seeks to learn the truth and thus, possibly or probably, is in an adversarial position in relation to one or more of the child's family, an adversarial position which is maintained at least until the conclusion of any court proceedings.

As the social worker responsible for the long term management and treatment of the case he or she seeks to achieve the best result for the child as an individual and as a member of the family.

From the testimony upon the Inquiry I am satisfied that adequate performance of the investigative role by one social worker may interfere with the proper performance by that worker of duties in relation to the long term management and treatment of the case. This is not necessarily because of any inadequacy on the part of the worker. It is more likely because of the way in which the child's family perceive the worker. Until the conclusion of the court proceedings the worker has sought to learn such things as when, how, why and by whom was the child abused and what is the relationship of the child in the family. Some of that may be, or at least be perceived to be, an attempt to place responsibility or guilt upon one or more of the family. In such circumstances it is at least difficult and perhaps impossible for the development of a rapport or relationship between that worker and the child's family to enable the preparation, development and implementation of a plan or programme for the care of the child.

I accept the thesis that abuse requires a special type of person to handle its various phases and facets. I accept the further thesis that cases of abuse are very demanding and draining of workers and that workers should be relieved of such duties from time to time. It seems therefore that not many of the fifty or so children's aid societies in Ontario will be able to obtain the services of enough social workers, suited for and skilled in all phases of abuse cases, so as to enable the ideal separation of duties, so that one worker or team of workers is not seen by the child's family to be adversarial to them and thus burdened to try to establish an ongoing rapport of trust, confidence and understanding necessary for the long term success of the case.

It seems to me therefore that it will be particularly helpful to the smaller children's aid societies for the Ministry to have personnel available to complete the investigative phase of any case in which the local children's aid society feels it requires assistance. The investigative phase would include all court proceedings seeking to show the child to be a child in need of protection or seeking to show anyone to be guilty of having abused the child.

While the Ministry's personnel attend to the investigative phase of the case, the local society's personnel will seek to devise a plan or programme for the management or treatment of the case. Such a plan or programme cannot be developed in isolation or ignorance of the information gathered by the Ministry's personnel in investigating the case. There should be a free exchange of information and opinion between the Ministry's personnel and that of the local society. The Ministry's personnel should not be entirely unmindful of the hopes or wishes of the society's personnel for the eventual outcome of the case. Their investigation should seek to obtain information to assist the local society in developing a plan for the management and treatment of the case. The society's personnel should not be entirely unmindful of the negative factors disclosed by the investigation. The workers from the Ministry and from the local society must develop a process to achieve the most desirable result for the child, primarily, and for the family and the community generally.

46. *I THEREFORE RECOMMEND THAT the Ministry establish and maintain a system whereby local children's aid societies shall have immediate access at all times, twenty-four hours a day, to advice and assistance from social workers skilled and qualified in all aspects of child abuse cases. In addition to such a system the Ministry should establish and maintain a group of social workers, especially highly trained in the investigative phases of abuse cases, so as to enable one or more of such workers to attend in a local community, promptly upon the request of the local children's aid society, to investigate any incident or allegation of abuse and to pursue any court proceedings which might ensue. Depending upon the nature of such court proceedings the local Crown attorney or the solicitor for the local children's aid society shall be instructed to present the material in court.*

RECOMMENDATION #47

47. *I FURTHER RECOMMEND THAT the Ministry's personnel conducting any such investigation, while having authority and responsibility for the conduct thereof, shall generally recognize the valid concerns of the local children's aid society for the eventual and long-term success of the management and treatment of the case. To that end the Ministry's personnel shall keep the local children's aid society fully and promptly advised of what has been revealed by the investigation. They shall seek to obtain information required or desired by the society for its purposes in managing and treating the case. In similar vein the local children's aid society shall keep the Ministry's personnel advised of the society's plan or programme for the management and treatment of the case and the rationale therefor. In the event of any difference of opinion between the Ministry's personnel assigned to the case and the personnel of the local children's aid society, the matter should be resolved by more senior personnel of the Ministry whose decision should be the determination of the issue as between the Ministry and the local children's aid society, provided however that, if either party feels it necessary or advisable so to do, the question may be raised before the judge sitting in the court hearing the matter who may take the difference of opinion into consideration in determination of the main issue or issues in the proceedings.*

RECOMMENDATION #48

In other areas of the Report I have expressed criticism of the failure of the Ministry to fulfill its obligations to children's aid societies in general and to the Society in particular during Kim's lifetime. Insofar as the Society was concerned there was a tremendous change in the involvement of the Ministry in the affairs of the Society in 1978. There was a clear relationship between that change and the public revelation in late 1977 and early 1978 that the Society's management of Kim's case was so suspect and so open to criticism. The Ministry made arrangements for specially selected and highly skilled management personnel to be assigned to assist the Society.

My next recommendation arises from that special effort by the Ministry.

Mr. McPhedran was one witness who commented upon it. In the course of discussing his recommendations to me he said:

> "Just some things that have come up in the course of receiving a great deal of help from the Ministry, from particularly Mr. Peter McCabe and Harry Zwerver and many, many others who have been down here and assisting the Society in this difficult time. One of the ideas that came up was a mobile team of experts who would be ready to assist any agency that gets into any kind of difficulties, whether they be administrative or on the level of social practice and I think that's something that perhaps the Ministry might be interested in as well as the OACAS and they may combine on joint bases or independently provide or identify people within the system who are prepared in a given time to go somewhere as we have had in the Sarnia, Lambton to help out the local management with any particular case they may come up with..."

That really was what occurred in the spring of 1978 when the Ontario Association of Children's Aid Societies responded to the Society's request and organized the committee I have chosen to call the

Farina Committee. That really was what happened when the Ministry arranged for Mr. Zwerver, Mr. McCabe and others to be available in the City of Sarnia to assist the Society over a lengthy period of time.

My recommendation is merely to express my belief that assistance from the Ministry and from the Ontario Association of Children's Aid Societies should be promptly available to any children's aid society which feels the need for assistance. Not every request for assistance will require a response as massive and long-lasting as the Society needed and apparently received. But the facility should be there to provide it quickly if needed either in relation to an individual case of abuse or to a more general situation within the society.

The personnel to comprise that facility may be found in various positions. Some may be employees of the Ministry. Some may be employees of the Ontario Association of Children's Aid Societies. Others may be employed by other children's aid societies or other social agencies who will have indicated a willingness to permit them to be a part of such a facility. Others may be, like Dr. Bates and at least some of the others who served with him on the committee to organize a seminar for the Ministry in 1976, in private practice or in other employment.

I liken the organization and maintenance of that facility to the Criminal Investigation Branch of the Ontario Provincial Police who, I believe, are capable of assigning qualified personnel even to remote areas of the province on short notice.

48. *I RECOMMEND THAT the Ministry establish and maintain a cadre or roster of experts in the field of child care, and particularly the detection, investigation, assessment, management and treatment of child abuse, thus including representatives from a number of professions, disciplines and callings, sufficient to enable it to provide prompt assistance by qualified persons to any children's aid society needing* *assistance. Such cadre should be composed of a sufficient number of such qualified persons as may be necessary to ensure that the person or persons with the skills and experience required in the particular circumstance will be quickly available to provide the necessary assistance, including physical attendance. A senior member of that cadre should always be available for consultation with the local children's aid societies and to assign responsibilities to appropriate members thereof, including authority to travel.*

RECOMMENDATION #49

The practical limitations upon the employment by children's aid societies of persons with special training or skills which may not often be required in the one community might be overcome apart from direct assistance from staff of the Ministry. For example, the Ministry, as a likely custodian of such information, might maintain something in the nature of a register of employees of children's aid societies and similar organizations or persons in private practice, who possess certain specialized skills and knowledge which might be made available to assist a children's aid society with a particular case which requires the application of such skills and knowledge. The basis on which such services might be provided should be negotiated by the parties to the arrangement, perhaps with the assistance of personnel from the Ministry. I regard this as a logical extension of the child abuse team of workers employed by the children's aid society and the more comprehensive community child abuse team of workers representing various disciplines.

49. I RECOMMEND THAT the Ministry establish and maintain a list of persons employed or practicing in Ontario who possess special skills or knowledge and whose advice or assistance might be made available on some basis to assist a local children's aid society or multi-disciplinary team in a particular case requiring the application of special skill or knowledge.

RECOMMENDATION #50

Upon the Inquiry it was stated by qualified persons that in the local communities the children's aid societies have the prime responsibility for the welfare and protection of children. It was said that while the local children's aid society might enlist the assistance of others it nonetheless retained the prime responsibility. I regard that view as having validity. It is the basis for some of my recommendations as to the onus lying upon children's aid societies to be at the forefront of local organizations and efforts to deal with child abuse.

It is my opinion that the principle of that view can and must be extended beyond the borders of the local communities to embrace the entire Province. I regard implementation of Recommendations numbered 46 and 47 as being a partial implementation of the recommendation I am about to make. In that extension of the principle the Ministry should have the prime responsibility for the welfare and protection of all children in Ontario. It may look to other ministries or levels of government or even beyond government for assistance and co-operation, but nonetheless the prime responsibility must lie upon the Ministry.

I have written of my concern that some of the high sounding proposals of the Ministry suggested as being imminent in 1978 or even some of the programmes then begun might wither and die because of some unilateral, perhaps unannounced or unpublicized, action or even some inaction by someone in the Ministry. That is what happened earlier when the "readers" disappeared.

One response by Mr. Charko to a statement by the Ministry's counsel in cross-examination is an example of what causes me to have that concern and to suggest in these Recommendations that the present Minister satisfy himself that proposals or actions made in the furor of activity in 1978 following disclosure of the circumstances of Kim's life and death have been fulfilled and continue to be fulfilled or, if not, why not and what, if anything, has been and is being done in replacement. In my view it will be a challenge for the Minister and his personal staff to get behind the fine words and learn what really has been and is being accomplished.

The statement of counsel and Mr. Charko's response thereto to which I have referred were transcribed as follows:

> "Q. And I think that you mentioned earlier in your evidence that three persons had been hired by the Ministry to deal with all the child abuse cases in the province and to review them in all the Societies?
>
> A. They were seconded to us for certain period of time."

That may have arisen out of Mr. Charko's earlier testimony when he responded to questions as to the organization and personnel of the Ministry in September, 1978. He began with the Minister and proceeded downward through various levels to his position and then the following questions and answers are recorded:

> "Q. And other people working under you?
>
> A. Right.
>
> Q. And could we follow their levels down?
>
> A. There are field consultants.
>
> Q. All right, how many of those are there?
>
> A. At present time three full time and two part time, because part time, half of their time is in Child Welfare and half of their time is with the Children's and Youth Institution.
>
> Q. So there really, if you want to put it in time spent, four field consultants?
>
> A. Plus myself.
>
> Q. Right. Now, are there any people below the field consultants?
>
> A. No.
>
> Q. All right.

> A. Just the clerical staff."

In addition there was a child abuse unit headed by Dr. Sohn.

Or that statement may have arisen out of another response by Mr. Charko when he said:

> "A. The Ministry considered [doing a complete audit of agencies across Ontario], there is a greater need for manpower and as of May 1977, more staff was hired. We, three consultants were hired in May of 1977 and one at the beginning of June in 1977."

Or it may have arisen from yet another response by Mr. Charko when he was asked if the Ministry had begun audits of children's aid societies. He said:

> "A. What we did, not the audit, but the child abuse cases as I briefly mentioned yesterday, three people were seconded from other Branches to go out to the Children's Aid Societies and read the files and this being done, this review started at the beginning of July [1978] and it's going to be finished in a week or so [September, 1978]."

All of that gives the impression that personnel were engaged by or assigned to the Ministry to perform certain tasks for or in specific periods of time. I did not form any impression of any permanence of engagement or assignment.

It is on that basis that I found my next recommendation.

50. *I RECOMMEND THAT, while the local children's aid societies have primary responsibility for the care and protection of children residing within the geographical areas served by the societies, the Ministry must assert and acknowledge that it has an overriding and superior responsibility for the care and*

protection of all children in Ontario. To that end the Ministry should ensure that it always has sufficient resources of personnel, equipment and funds to enable it to perform its duties and obligations to children.

RECOMMENDATION #51

Heretofore in these recommendations I have directed attention particularly to prevention of abuse and to the matter of detection of the possible existence of an instance of abuse and the investigation required to determine whether or not abuse has in fact occurred or has likely occurred. Questions of judgement arise in all of these areas, but perhaps even more questions of judgement arise in relation to the management or treatment of an abuse situation once its existence is proven or shown to be likely. There are principles, practices and procedures generally found to be acceptable in such cases, but each case will require close examination and study to determine which principles, practices and procedures, if any, in whole or in part, might most profitably be employed in the particular case.

Abuse is not a simple matter. It may have many bases. It may arise in an explosive reaction to crisis. It may arise and develop in a slow progression from incident to incident. Its roots may be hidden in one or both of the parents, or in the family or even in the child. Aptitude, training and expertise are needed to establish its existence and its causes. Similarly aptitude, training and expertise are needed to manage or treat abuse and, hopefully, to prevent its progression or recurrence.

I was much impressed by Dr. Turner's testimony as to the absence of any effective system to control the use of the designation "social worker" in various fields including child welfare and child care. I will limit my comments thereon to the application of that term to persons employed in child welfare or child care by children's aid societies and similar organizations as well as by various levels or branches of governments.

Several of the witnesses who testified upon the Inquiry were or were said to be social workers. There was a vast difference in their academic training and their work experiences. There was Mrs. Lo. There was Mr. Khattab. They seem to me to be at the low end of any scale by which to grade social workers. There were Mr. Lovatt, Mrs. Harvey, Mr. Carter, Mrs. Archer, Mrs. Kirby, Mrs. Dick and Mrs. Saul. They had a wide variety of educational or academic backgrounds and work experience. There were Mrs. Farina, Mr. Heath, Mr. Petersen, Mr. McCabe, Mr. Zwerver, Mr. Macdonald, Mr. Charko, Mr. Mainville, Dr. Sohn and Dr. Turner. They had impressive widely divergent qualifications.

In my view Dr. Turner was on solid ground when in his testimony he deplored the absence of adequate means to regulate the use of the appellation or designation "social worker" and the practice of social work.

I have reviewed the provisions of The Child Welfare Act in force during Kim's lifetime and The Child Welfare Act, 1978. The newer legislation did nothing to approach the problem mentioned by Dr. Turner. I understand from the testimony that similar concern has been expressed as to the use of the designation "social worker" in fields other than child welfare. Mr. Khattab, I suppose, might be one whose duties went beyond the general field of child welfare.

While both The Child Welfare Act and The Child Welfare Act, 1978 purport to require children's aid societies to employ as social workers persons with special qualifications of education or experience it would seem that the requirements are not sufficient to ensure that persons so employed are in fact, as opposed to appearance, qualified when employed or remain qualified after employment.

Mrs. Lo's qualifications appeared to be sufficient to enable her to be classified by the Society as a Social Worker I. No one who testified upon the Inquiry suggested that her qualifications were insufficient to justify that classification under The Child Welfare Act and the Regulations made thereunder.

The true worth of Mrs. Lo's qualifications as a social worker in the field of child welfare was sadly illustrated by the testimony.

Mr. Khattab was another who might very well have been entitled to ask to be classified as a Social Worker I or even higher if he had been employed by the Society. But clearly his qualification in the area of child welfare was terribly lacking.

He was not aware of rather elementary facets of child abuse. He was not aware of the expression "battered baby syndrome."

But each of Mrs. Lo and Mr. Khattab was equally entitled with any of the highly educated, trained and experienced other witnesses to be classified as a Social Worker if employed by a children's aid society. Only the numeric suffix and possibility of promotion to supervisory positions might vary.

Nowhere in the legislation or regulations is there any requirement that matters of difficulty and complexity, such as child abuse was shown to be, must be assigned by children's aid societies to workers of particular qualifications. But every witness who addressed the subject spoke of the need for specially trained and experienced workers in all phases of child abuse cases.

Kim's case was assigned to Mrs. Lo. The assignment was criticized as inappropriate or unwise, but no one suggested that it in any way was a breach of The Child Welfare Act or the Regulations thereunder. Conceivably Kim's case might just as easily have been assigned to someone with even less qualification than Mrs. Lo. That someone could be a social worker classified by the Society as a Social Work Assistant. The only qualifications for that classification was successful completion of Grade 13 in Ontario or its equivalent as determined by the Minister or employment as a social worker in a children's aid society for at least one year immediately before January 1, 1966.

The situation under The Child Welfare Act, 1978 is not much changed.

I appreciate that the recommendation I am about to make may very well have implications beyond the field of child abuse and indeed even beyond child welfare. However I see no reason why the recommendation cannot be implemented at least in relation to child welfare and the application of the Child Welfare Act as it now stands.

It is appropriate for me to set forth some extracts from Dr. Turner's testimony. No testimony was led to challenge the validity of Dr. Turner's view. In my opinion Mrs. Lo's involvement in Kim's case provided a demonstration of what concerned Dr. Turner. That demonstration related specifically to The Child Welfare Act. I think Mr. Khattab's involvement provided a further demonstration of that concern beyond the scope of The Child Welfare Act.

Dr. Turner expressed his concern very early in his testimony. That expression began when he was asked, in effect, what might have been expected of "a reasonably intelligent, diligent social worker" confronted by the situation as Mrs. Saul was on June 17, 1975. I now set forth his response to that and the following series of questions:

> "A. Well Your Honour, one of the difficulties I have in responding to Mr. McRae's question is this whole question of what do we mean by a social worker and I don't know whether it is appropriate for me to comment on that or not. It is one of the difficulties we have in a case like this because we have the public use of the term, social worker, which tends to get used...with anyone who is carrying out a function like this and my own perception of who or what is a social worker is a little more restricted and I don't - I think I should be clear on which context you would want me to respond to that.
>
> Q. Well that was...
>
> A. The other adjectives you added, I could put myself in that framework if it is someone who happens to be employed by a Children's Aid Society, it may or may not fit my concept of...
>
> Q. I understand your problem because there is no such thing as a professional qualification for a social worker. Is that what you're saying?
>
> A. Well there are professional qualifications - very stringent ones Mr. McRae, but in the province, there is no legislation restricting use of the term or the title and because of this, it

certainly, with the press we've had that difficulty before because people have been used and it's certainly of great concern to our profession that there isn't more restricted use of the term. I think it would help us in some of these situations.

Q. Yes. You think that there should be professional qualifications laid down and there should be some method of controlling who gets into the social work field so that people have a certain minimum qualification before...

A. Oh yes, very much so, I think it has long been an aspiration.

Q. Sir, would you like..is this an opportune time for you to sort of elaborate on what you think should be done in that regard or would you rather do that later?

A. As you wish, I can do it now.

Q. All right. We can start with that then.

A. Well because of this very problem that we're facing in this case and indeed in similar cases are the Professional Association of Ontario as has taken place in virtually every other province in Canada has aspired to at least some type of registration act although many of us now consider that even that might be insufficient and that we should really seek licensing of the profession. There was, Your Honour, within the profession some struggle as to whether we should only seek registration or whether to ask for licensing and...

Q. Registration for some people.

A. The control of title at least. At least there would be some restraints put on the use of the title. I think in view of the demands on the profession over the last decade, that most of us would now pursue the licensing which indeed I think some eight or ten States in the United States now have licensing boards and licensed Acts that provide for licenses.

Q. So that you have to have a certain educational background and pass qualifying examinations?

A. That's right.

Q. The same as for other professionals such as medicine, law...

A. Yes and we do have a strong professional body within the province but it has no status within the...except the status as a private corporation I would presume it to be. So that we are very firm on these minimum requirements for membership into professional associations but this of course does not exclude people from using the title.

Q. Right. And that would be some control and certainly prevent lessly qualified people getting into positions of responsibility.

A. Yes and I think I'm not saying that there are not positions in our field. It's a very broad field and there are people with lesser qualifications shouldn't be used but I think we would be clear then in the responsibilities we lay on some of these people. So someone in and I'm not sure of the qualifications of this person right now and perhaps you could help me but I think we wouldn't then be asking them to make some of the decisions that are necessary in a field such as child protection.

Q. Well, I take it then that there is a sort of a trend or a movement in that direction already. Ten American States and

A. Yes.

Q. ...a movement here in Canada towards that.

A. Yes.

Q. Do you foresee that coming to fruition here in Ontario? At least registration?

A. I think so. I think that we're...if I'm correct, we're at least in the drafting stage of legislation with inevitable background work that's required in that. It's further complicated though and I believe that there are formal definitions of Social Worker 1, 2 and 3 in different Ontario government ministries. I believe the Community Social & Family...the Community.. I'm sorry it's a name that escapes me.

HIS HONOUR: Community and Social Services.

A. Yes that's it. We changed it to Community and Social Services. Thank you.

Q. Stick with the ministry, it's easier.

A. COMSOC is what we call it.

Q. Ministry of Community and Social Services.

A. Yes, Ministry of Community and Social Services had identified Social Worker 1, 2 and 3 of the Children's Aid Society have done this. I know in the Probation Services, there are job classifications that use the term social worker, which again further complicates this matter. Many agencies, private agencies do have job classifications which usually stated some type of minimum criteria by which people are assigned to these positions but they are really assignments of tasks rather than positions that are based on a set of training or examiantion.

Q. Right well there are minimum qualifications not set out in the regulations of the Child Welfare Act and that's what you're referring to.

A. Yes.

Q. All right so...

A. I'm sorry. I didn't mean to divert.

Q. No but your basic point is that there should be further professionalization of social worker and certainly registration at the very least...

A. Yes.

Q. ...of the names so there is no confusion and that that would be a safeguard preventing inexperienced or people without proper qualifications getting into situations of responsibility which they weren't able to handle.

A. Yes and then it gives us I think, us, by that I mean the professional body some internal sanctions that I think are so necessary where a thing may not be necessarily been without...outside the bonds of the law but one would not accept it as approved professional practice and at least one could take the necessary internal discipline that any professional body has to deal with these I don't think I'm in no way suggesting that that would result in...that situations like this would not happen but I think at least it means there could be some preventative work to try and see that they don't happen so frequently."

At a later time he suggested that legislation of the sort he contemplated might helpfully contain provisions to overcome situations such as Mr. Carter encountered when Mr. Higgins issued his direction to Mr. Carter. Dr. Turner suggested the legislation might specifically empower a social worker, truly engaged in that profession, to obtain information from persons with whom he or she is working in the practice of the profession, that is his or her clients, and grant to those clients privilege in relation to that information not unlike solicitor-client privilege. Dr. Turner felt that would enable the social worker to obtain information necessary or useful in managing the case without in any way exposing the clients to the risk of such information being used against them in other proceedings, such as under section 40 of The Child Welfare Act. Dr. Turner recognized that the Legislative Assembly would not lightly create that sort of privilege and likely would do so only if social work was truly a profession practiced by qualified persons acting with professional responsibility and control.

And again, as Dr. Turner responded to counsel's request that he set forth his views as to any recommendations I might make in this Report, he expressed himself as follows:

> "Certainly the constant thing for me is the question of competence...the question of what is it society expects of the people that are put in charge of these situations in view of the necessary knowledge and skills to carry out these things and this is certainly a resource question and obviously Children's Aid Societies are faced with this all the time. We know how much we don't know about this new phenomenon, at least this phenomenon of these very violent child abuse cases.
>
> We don't really know whether in fact it's the frequency of these cases has changed a great deal. There does seem to be some indication though that the dramatic violence that we have seen in many of these cases is on the upswing. Although I know there are people who would challenge it but nevertheless we cannot take risks in society and we must make sure that people who carry these responsibilities have the full availability of the knowledge and skill and the research that's available to them.
>
> Now, I'm sure it could only appear to be some kind of vested interest that I would think that every person carrying a social work function in Ontario should have a Masters or a Doctorate degree in social work but I think we can indeed do better

than we have done in setting out some basic requirements and making sure that people meet them. At the same time, I think we must not only hold agencies and societies responsible, I think there are times when we must hold individuals responsible and that's why I spoke so strongly about the need for control of social workers so that when they are good, they will be recognized as good but when they are bad, that sanctions can be taken that will ensure that it not happen again.

I don't know to what extent Children's Aid Societies have made use of the knowledge that is available. There is a rich literature now developing in the whole field of child abuse. I don't know for example in this case, for example, did the Agency Library have the basic texts on child abuse? Did it make use of these? There are training programs available through some of the American agencies but I know our own province has the use of them and in fact is using them that help agencies with less than fully trained people to upgrade themselves.

Neither do fully trained people always have the...but fully qualified I should say... people with graduate degrees in professional training, always have the knowledge that is necessary and I think from time to time, we who are in the educational part of training professionals should be reminded that it's important that everyone who graduates from a Faculty of Social Work for example should be at least minimally acquainted with this field and not that when they are in positions, then that they can follow up on the knowledge that's available. The theme that we've just addressed is probably the most critical one and that is this question of how can this very complex yet very exciting network of helping agencies learn to work together in a way that maximizes that with all the knowledge and skill we have available, that it will be made use of for the good of the client."

Later Dr. Turner spoke of the need for continuing education and in-service training to build on the basic professional competence achieved earlier. He spoke of the need for each children's aid society to maintain an adequate working library for its personnel who too have an obligation to keep themselves current in practice and procedure and to maintain personal libraries.

I am entirely sympathetic to and supportive of Dr. Turner's views. Because of the nature of the Inquiry the following recommendation is limited in its application to child care and child welfare within the field of social work. The recommendation however might very well be found to be capable of application to other distinct areas of social work regulated or controlled by or under other legislation.

51. *I RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act and the Regulations thereunder to provide that, for the purposes thereof, social work is a profession to be practiced only by persons possessing suitable academic qualifications and membership in a professional association to be created under the statute and to possess powers to regulate the practice of the profession including appropriate powers to establish standards of qualification for membership, competence and ethics and to impose penalties for failure to maintain qualification, for incompetence or for breach of ethics. Only members of the profession shall be entitled to be classified as social workers for the purposes of the Child Welfare Act.*

RECOMMENDATION #52 and #53

I see no reason why persons newly entering the field of child welfare should not be required to have successfully completed a course in social work at a school of social work that is a member of the National Committee of Canadian Schools of Social Work of the Association of Universities and Colleges of Canada.

The testimony as to varying tolerances of conduct in various parts even of Canada and of the world and Mr. Khattab's testimony as to his impressive academic qualifications and yet as to his lack of knowledge of child abuse satisfy me that, in instances of child abuse at least, if not in all areas of child welfare, education related to circumstances in Canada is essential.

Provision should be made in the legislation to furnish some security to persons who have served children's aid societies in the past and have been classified as social workers by reason of lesser educational qualifications accompanied by years of experience in social work.

However mere years of experience provide no measure of a person's knowledge and skill in social work. Conceivably a person employed by a society for years and given the title "social worker" may really have been doing purely clerical functions not unlike the so-called "review unit", which received reports to the Central Registry, was doing for the Ministry. That should not entitle that person automatically to the right and privilege of membership in the profession.

Therefore, any such provision should be subject to anyone benefitting therefrom being required to attend and successfully complete in-service training courses to be provided under the direction and guidance of the professional association and subject to the approval of the Minister.

In the same vein anyone who is a member of the professional association should be required to maintain his or her qualification for such membership by attending and successfully completing in-service training courses similarly provided under the direction and guidance of the professional association and subject to the approval of the Minister.

In the light of the testimony as to the serious view that is taken of child abuse and of the difficulties, complexities and subtleties thereof provision should be made to the effect that only social workers who have successfully completed special courses upon child abuse similarly provided and approved by the professional association and the Ministry shall be assigned responsibility for the management of cases of child abuse.

It may very well be that some societies do not have any social worker so qualified to manage cases of child abuse. If so, the Ministry should have an overriding duty and authority to provide such assistance, advice and supervision as may be necessary to ensure the proper management of cases of child abuse arising in the areas served by such societies. To maintain a degree of equity among the societies and to prevent any abuse of this provision the Ministry should be empowered, in the Minister's discretion, to impose fair charges for any such assistance, advice or supervision.

In my view the establishment of social work as a profession, at least in the area of child care and child welfare, will help to ensure that the safety and protection of children is not entrusted to unqualified persons. Our children are too valuable in every sense to have their welfare and care entrusted to anyone who is not qualified.

52. *I THEREFORE RECOMMEND THAT the Ministry seek amendment of the* *__Child Welfare Act__* *and the Regulations made thereunder to provide;*

1. that all persons entering the profession of social work for the purposes of child welfare after a date to be fixed by the Minister shall have successfully completed a course in social work at a school of social work that is a member of the National Committee of Canadian Schools of Social Work of the Association of

Universities and Colleges of Canada;

2. that persons who have served children's aid societies as social workers since a date to be fixed by the Minister shall be entitled to continue to do so provided they successfully complete courses as required or prescribed by the governing body of the profession and approved by the Minister;

3. that members of the profession maintain satisfactory standards by successfully completing courses or examinations prescribed from time to time by the governing body of the profession and approved by the Minister.

RECOMMENDATION #53

53. *I FURTHER RECOMMEND THAT the practices and procedures of each children's aid society provide that cases of abuse shall be assigned only to a worker or workers who have successfully completed special courses upon abuse prescribed by the governing body of the profession and approved by the Minister. If no such worker is on the staff of the society it shall seek and receive appropriate assistance from the Ministry.*

RECOMMENDATIONS #54 and #55

There was testimony upon the Inquiry that in some situations decisions in child welfare cases might be affected by financial considerations.

It was apparent that financial matters were important to the Society and to Mr. Lovatt. There was no solid evidence that any decision in the management of Kim's case was affected by financial considerations. But there were so many bits or pieces of testimony that there was an intangible web suggestive of a relationship between the availability of funds and decisions and actions in Kim's case.

There was the insistence that Kim's case be opened as of August 31, 1975 "for statistical purposes," to use Mrs. Harvey's words.

There was the reference to the preparation of records by some children's aid societies whereby they benefitted more than other societies, including the Society.

There was the reference to calculation of provincial funding being more generous to children's aid societies for some types of service than for other types, such as programmes to prevent abuse.

There were the memoranda from the Ministry to all children's aid societies suggesting they review their criteria for taking children into care and keeping them in care to enable compliance with the fiscal restraint programme imposed on and by the Ministry.

There was the reference to the Society being unable to employ sufficient workers because of financial limitations.

There was the reference to the Society not being allowed funds to obtain legal services.

There was the testimony that the Society was without basic office supplies or materials for its workers in the spring of 1978 and that lack was attributed to the absence of money.

It is unthinkable that any children's aid society or social worker worthy of that designation, even in the very loose sense deplored by Dr. Turner, would deliberately permit or make any decision adverse to the best interests of a child solely because money was apparently not available. Any employee of the Society who was asked a question about such a possibility in Kim's case, denied that any decision in her case was made on the basis of the absence or availability of funds.

I have accepted those denials, but there remains the nagging concern that, perhaps only subliminally, there may have been decisions unduly influenced by financial considerations.

It is self-evident that in child welfare, particularly in cases of children who are in need of protection by reason of abuse, decisions that are or have a high risk of being contrary to the best interests of the children should not be made for any reason. Kim's was a case where some such indefensible decisions were made. They would be reprehensible and dishonourable if matters of finances had influenced the consideration of any issue and the decision resulting therefrom.

Full and proper observance of the requirement that each decision upon a case of abuse be preceded by a conference of the child abuse team and the appropriate support personnel and that a proper permanent record of the proceedings at such conference be maintained should serve to minimize the possibility of errors of judgement and certainly errors based on improper grounds, such as scarcity of funds.

Because of the financial concerns of the Society and its personnel expressed or discussed during the Inquiry I deem it advisable to state the obvious in the next two recommendations.

54. *I RECOMMEND THAT the Ministry, in clear and unequivocal written language understandable to everyone, even those who have no experience in writing, reading or understanding official documents, affirm to children's aid* societies and their boards of directors, local directors and social workers that, in the planning for and the management and treatment of any case of abuse, no major decision is to be made on the basis of the society's financial position. The decision to apprehend the child or to leave him or her in the family home and the decision to retain the child in the physical control of the society or to return him or her to the family, with or without supervision, would certainly be major decisions. The child's very life depends upon each of those decisions. The Ministry should equally clearly state its willingness to give favourable consideration to requests for additional funds to support correct decisions which might otherwise over-tax a society's financial resources.

RECOMMENDATION #55

55. *By way of extension to the immediately preceding recommendation I RECOMMEND THAT each children's aid society, again in similarly clear and unequivocal written language, inform all of its social workers of the Ministry's affirmation of that position and the society's intention to adhere thereto.*

RECOMMENDATION #56

I regard the next recommendation as an example of how the Ministry must assert and acknowledge its overriding responsibility for the protection and care of all children in Ontario pursuant to the legislation.

Throughout the Inquiry witnesses in oral testimony or by reference to literature emphasized the right and the need of every child in Ontario to an equal standard of facilities for care and protection regardless of the location of his or her home in Ontario. However it was generally recognized that many factors combined to make it difficult, if not impossible to achieve such equality.

Some of the factors mentioned in testimony have, in my view, greater validity or impact than others. Mr. Lovatt spoke of the problem the Society had experienced in trying to employ highly qualified social workers. He related that difficulty to the absence of a university in the City of Sarnia or County of Lambton. Subject only to changes brought about by developments of wider economic effect since Mr. Lovatt left the Society, that claim would appear to have had little validity.

Others spoke of the ability of children's aid societies in larger centres to employ and develop social workers with specialist skills. That ability was related to the correspondingly greater size of such societies and thus the greater demand for the services of specialists. In the light of the testimony as to the few cases of abuse dealt with by the Society during the years of and about Kim's lifetime, that testimony would appear to have considerable validity.

Apart from conduct of prevention programmes one who was or hoped to be a social worker specializing in cases of abuse would not likely find in a children's aid society such as the Society enough instances of abuse to enable full development or use of specialist skills.

However, even as I write that, I hark back to Mr. Zwerver's testimony to the effect that, in the spring of 1978, he could not assure the Board of

Directors of the Society that there was no other case such as Kim's somewhere in the Society's system. I also hark back to the testimony of others as to the general frailty of the statistical base for any study as to the incidence of abuse in Ontario and elsewhere. Thus the validity of the testimony as to problems of hiring specialists in the handling of cases of child abuse may be subject to question.

However, be that as it may, I am satisfied that in fact there are disparities in the standards of protective service immediately available to children in various parts of Ontario. That is not unexpected. Disparities in service are not confined to protective service. One need only read newspapers, watch television or listen to radio to recognize that. I think of the instances in which children from all parts of Ontario, near to or far from Toronto, are brought by helicopter or other ambulance to receive treatment and care at the Hospital for Sick Children in Toronto. Presumably such treatment and attention are not available in their own communities. We all realize that a hospital such as the Hospital for Sick Children cannot be established and maintained in every part of Ontario. The same applies to persons who are similarly transported considerable distances to larger centres for treatment or attention not available in their local communities.

But disparities are not confined only to protection of children or health. They exist in every phase of life. People often must make personal decisions based on a consideration and evaluation of those disparities. One may decide to establish his home in a small town because he feels the advantages of such a location outweigh, for him and his family, the advantage of the large city. Another may make a different decision.

Disparity in service should not mean disadvantage.

In my view the full and proper performance by the Ministry of its duties under the Child Welfare Act will prevent any disadvantage and will ensure that any child in Ontario in need of protection will receive protection and that it will be in keeping with standards then currently provided across Ontario.

While the larger children's aid societies may require their own specialist workers and facilities to meet the needs and demands of their own communities, the Ministry must have, on its own staff or readily available, specialist workers and facilities to advise, supplement, support and generally assist those societies in communities which do not have service demands or needs sufficient to justify the employment, or perhaps even the availability of specialists and facilities locally. In this regard I liken the Ministry's employment or retainer of such personnel and facilities to its employment of specialists to assist local children's aid societies in investigation and other phases of cases of child abuse, a matter I have discussed elsewhere in this Chapter.

The sixteenth recommendation in the Garber Report was:

> "16. That all abused children have equal access to places of safety for acute care, and equal access to regional places of safety for chronic or specialized care."

I endorse that recommendation and believe it to be entirely within the capabilities of every children's aid society in Ontario with the proper support, advice and assistance of the Ministry.

56. *I RECOMMEND THAT the Ministry ensure that no child who has been abused or is in danger of abuse be at a disadvantage in relation to protection and care by reason of the location of that child anywhere in Ontario. The Ministry should ensure that each children's aid society have or have readily available to it the personnel and facilities to ensure that the child is not at any such disadvantage. If local conditions make it unreasonable for a children's aid society to have such personnel and facilities or* *to have them readily available, the Ministry must provide such personnel and facilities or make them available for the child, but they need not be in the same community as the child's home.*

RECOMMENDATION #57

The testimony upon the Inquiry illustrated the inadequacy of the leadership provided to the staff of the Society by Mr. Lovatt and Mrs. Harvey. Whatever qualifications Mr. Lovatt might have been felt to possess to merit his appointment as Local Director of the Society in 1968 were acquired primarily during his service as a social worker and supervisor with the Society. It was during that period in his career that he was granted the degree of Bachelor of Social Work by the University of Toronto in 1963. He also took courses in basic child welfare, provided by the Ontario Provincial Government, as well as a supervisory course and an administrative course, provided by the Child Welfare Branch and the Ontario Association of Children's Aid Societies. As I understood his testimony all of his practical experience in social work and child welfare was as an employee of the Society.

Mrs. Harvey's training and experience appear to have been more varied. She was granted a degree of Bachelor of Arts by McMaster University in 1945 and worked with a children's aid society elsewhere in Ontario in 1945 and 1946. She worked for the Society in 1951 and 1952. In 1953 she received the degree of Master of Social Work from Smith College, in Massachusetts. That degree resulted from a ten week course in social work with a nine month field placement supervised by the agency and the college followed by a thesis and a further ten weeks of training. After that her experience was varied, but until 1961 most of it was with private agencies in the United States of America. From 1961 to 1968 Mrs. Harvey was not in the work force. In 1968 she was employed by Mr. Lovatt to be Supervisor of the Family Services Department of the Society.

Thus, in a sense, all of Mrs. Harvey's current experience in child care was as an employee of the Society. There was no testimony that anyone other than Mr. Lovatt expressed any opinion as to her qualifications to be a Supervisor. There was no testimony that the Ministry had in any way commented upon her entitlement to that designation under the Regulations made under The Child Welfare Act.

I gathered however that even senior officials of the Ministry, including Mr. Macdonald and Mr. Charko, were not satisfied with the Ministry's contribution toward the education and training of persons for senior positions of management of children's aid societies as local directors and supervisors.

Mr. Charko expressed concern about the training of local directors of children's aid societies in general and in relation to child abuse in particular.

He said:

> "...The area of training and I think maybe this is something that the Ministry should do, more courses both on management and then the whole area of child abuse which we are trying to do this and there will be, we are doing special projects right now that we want to learn something more about child abuse, but there is a need I think for selection of the type of staff to deal with the child abuse situations..."

Mr. Macdonald, in his own way, expressed a similar concern about the education and training of local directors. He enlarged the scope of his comment to include a corresponding concern in respect of the boards of directors of children's aid societies. In beginning his response to counsel's request that he give me the benefit of his recommendations arising from his observations of Kim's case and the Inquiry he said:

> "If I could concentrate on perhaps one area rather than trying to get into a variety of areas. My general recommendations related to that whole system perhaps are as much indications of what we have to do and what we are doing, and I think it's important knowing what we know now I think we have to do a great deal of work on the function and operation of boards of directors, on the relationship between local directors who take on program responsibility and boards of directors who take on the overall management and legal responsibility. I

think we have to extend that to the professional responsibility of the front line supervisors, the middle management staff as well as the field worker, but I would think that it's important for us if we are going to keep on top, and that's very much what it is, keep on top of individual cases through the mechanisms that we have available; that we have to elaborate our training, education and supporting systems to the key people in describing the Act and that is the boards of directors and the local directors. I think much of the very technical and very specific legislation requirements, standards requirements, procedural requirements we're tackling right now in great detail and we're working with the societies, with the Legislature, with the supporting groups to move ahead in that area, and I think we must not forget the involvement and engagement of lay people, boards of directors and their direct employees in the process. I think that's really --

Q. What you're saying is better communication between the local boards and the staff?

A. I think it's more than better communication, it's training in how to be a board member and training in what that responsibility is.

Q. That would be part of it though?

A. That would be very much a part of it. It's training a local director in how to work with his board and his responsibilities in response to that board, and it's more than simply communication, it's real skills that are required of the lay person and the director in the management of the enterprise."

I accept the tenor of such testimony that persons who are to assume positions of responsibility in children's aid societies require specialized training to enable them to fulfill their obligations. I think it is reasonable to assume that not every person who is capable, by reason of education, training and experience, to be a social worker functioning under or with the assistance of supervisors or a local director of a children's aid society, possesses corresponding aptitudes and skills and experience to enable him or her to perform the supervisory and administrative duties of a supervisor or local director.

57. *I RECOMMEND THAT the Ministry establish and maintain, possibly in co-operation with the Ontario Association of Children's Aid Societies, an ongoing programme to select and train social workers who may aspire to positions of responsibility as supervisors or local directors of children's aid societies. Successful completion of any course developed and presented as part of such a programme should be required of anyone seeking appointment to or employment in such a position. As mentioned elsewhere among these recommendations in other areas the programme should contain provision for facilities to enable persons who have achieved such positions to keep themselves aware of new or current developments and trends in relation thereto. The local children's aid societies should be assisted and encouraged by the Ministry in making it possible for appropriate members of their personnel to attend such courses.*

RECOMMENDATION #58

There was extensive testimony upon the Inquiry as to the need for the Ministry to set standards to be the minimum standards of the services to be provided by children's aid societies in the various areas of child welfare and child care.

It seemed that each witness who in any way discussed the matter of delivery of services by children's aid societies to children and families deplored the absence of standards against which the performance of individual societies and workers might be measured.

That absence of standards or the deficiencies of such standards as were in existence was not a phenomenon unnoticed before this Inquiry. Others in a variety of studies and reports had commented thereon and urged the Ministry to establish and publish standards for use by children's aid societies in their various fields of service.

Personnel of the Ministry were well aware of those earlier recommendations, some of which were made years before Kim's birth.

Witnesses upon the Inquiry who were in the employ of the Ministry appeared to bristle at any suggestion that the Ministry had done nothing in response to such recommendations. Some went into some detail to explain what the Ministry had accomplished, but, when one sifted through all the words and sought a document produced prior to Kim's death to set forth any such standards in respect of child abuse cases, nothing of any substance was forthcoming other than the 1976 publication by the Ontario Association of Children's Aid Societies.

To be sure in 1978 work in that direction was getting underway. The Garber Report had raised the issue again in 1978. In 1977 a Standards and Information Branch had been formed in the Ministry.

I understand from the testimony upon the Inquiry that the Ministry hoped to publish standards of service in respect of child abuse and I have since been made aware that publication of a manual containing such standards was in fact achieved in February or March, 1980. It is to be hoped that the Ministry will perform its announced intention to keep the manual current and in conformity with legislative and regulatory amendments and developments of practices and procedures in the field.

That may be another area in respect of which the Minister may wish to make inquiries from time to time to ascertain if that declared intention is being fulfilled by the Ministry.

Preparation of standards cannot be viewed as a task which is fully performed with the first issue thereof. It was clear that practices and procedures change and develop over time. That comes as much or more from field experience as from amendment or judicial interpretation of legislation and regulations. Thus it is imperative that standards when published be reviewed in the light of developments and that appropriate amendments be made and published.

However the preparation of standards of service and explanatory or other material is not in itself sufficient. There must be adequate publication and distribution of that material to every children's aid society and to every social worker employed by the children's aid societies. Insofar as those materials may require the involvement of persons or organizations other than children's aid societies and their employees, the regulatory bodies of other professions or disciplines and the associations of other organizations should be made aware of the materials, particularly the portions thereof applicable to such other professions or organizations.

Then too there must be assurance that those in the children's aid societies to whom the materials are made available have read them and understood them. That latter should be the responsibility of each children's aid society in respect of all of its social workers. That may involve organized periods of in-service instruction. It will involve on-going review, particularly in relation to revisions of the material and changing circumstances.

There must also be assurance that each children's aid society achieves a standard of service meeting or exceeding the requirements of the published standards. Only in that way will there be an approach to the uniformity of service across the Province of Ontario which is the goal desired by everyone working upon cases of child abuse.

That latter assurance can be gained only by adequate supervision, firstly of the individual social workers or teams of social workers by the supervisory personnel of each children's aid society and secondly of each children's aid society by the personnel of the Ministry.

There was some testimony as to a need or desire for a means of accreditation of children's aid societies. It seems to me that appropriate supervision and inspection of the societies by the Ministry to ensure that the societies are delivering services which meet or exceed the standards of service prescribed by the Ministry and are following procedures and practices which meet or exceed the requirements of the Ministry, is the equal of any system of accreditation by another body.

In a sense I regard the societies and the Ontario Association of Children's Aid Societies as a vehicle of ensuring that the Ministry fulfills its duties and, conversely, I regard the Ministry as the vehicle to ensure that the societies fulfill their duties.

Surely the well-managed societies will not stand quietly by and permit poorly managed societies to tarnish the image of all societies. Nor should the Ministry permit that to happen because it is the Ministry's duty to ensure that all of the societies fulfill their duties to an appropriate standard.

In other areas of this Chapter, I have written of a system of accreditation of the societies. In so doing I was not contemplating the introduction of any system of accreditation other than assurance by the Ministry, by appropriate supervision and inspection of the societies, that the societies met or exceeded the standards of service, practice and procedure prescribed by the Ministry.

I would trust that if the Ministry should fail to provide the necessary supervision and inspection the Ontario Association of Children's Aid Societies and persons such as the Farina Committee, Mr. Zwerver, Dr. Bates, Dr. Turner, Mr. McCabe and others would speak out loudly and clearly and would be heard by the Legislative Assembly of Ontario which would take the appropriate action.

Mr. Mainville expressed his opinion, particularly in respect of cases of child abuse, when he said:

> "...Certainly I agree that it's very important that we should have some very clearly defined standards of services, not only in the area of child abuse but in other services as well, guidelines and procedures and in addition certainly there should be a much more effective monitoring system --
>
> Q. --
>
> A. Internally within the Children's Aid Society and externally --
>
> Q. A more effective monitoring of child abuse cases?
>
> A. More effective monitoring of child abuse cases, specifically in terms of bringing together people from the Society with the Police Department, the medical authorities, before a decision is made on a child abuse case.
>
> Q. And externally as well?
>
> A. Well, when I mention externally I mean that the Society should consult with other bodies of authority within the Community.
>
> Q. The Police, Probation Services and County Health Unit?
>
> A. Yes.
>
> Q. What about further assistance from the Ministry specifically in child abuse cases?

> A. Well, I think it's the Ministry's responsibility to develop standards of services in consultation with the children's aid societies to ensure that effective guidelines and procedures are adopted by individual societies and to set in place some mechanism whereby they could effectively monitor the service that is being provided in child abuse cases.
>
> Q. Have you any suggestions how they could do that?
>
> A. No, I think those are the kinds of issues that people are concerned about and need to address very specifically...."

When Mr. Zwerver was asked for any recommendations he might care to make in respect of cases of child abuse or in respect of the operation of children's aid societies he said, with acknowledgment that he might duplicate those of other witnesses and those in the Garber Report:

> "...My first recommendation would be that the Ministry along with the Ontario Association of Children's Aid Societies, develop clear standards of service for all children's aid societies in order that there can be greater consistency of service to families and children across the province. These standards and their accompanying guidelines must also clearly spell out the coordinating and audit functions of the Ministry, the role of the local community in the operation of the children's aid society in order to eliminate any role confusion that might presently exist. In this way service can be more effectively evaluated and the many issues around funding can be more readily resolved. Decisions about funding can then be based on identified needs and the local agency's ability or lack of ability to meet those needs..."

Mr. Allen in his testimony, part of which is set forth in an earlier part of these recommendations, had expressed the need for monitoring of the children's aid societies by the Ministry to ensure compliance with the Ministry's requirements as to procedures and practices.

I am aware that the legislation enacted in 1978 by paragraph h of subsection 2 of section 2 imposed on the Director appointed by the Minister a duty to ensure that children's aid societies provide the standard of services and follow procedures and practices prescribed under subsection 3 of section 6. That latter provision requires the societies to provide the standard of services and follow procedures and practices "that shall be prescribed by the Minister."

As I have written elsewhere I would hope the Ministry shall treat that as a statutory requirement that the Minister prescribe standards of service and procedures and practices.

If the Ministry does not do so subsection 3 of section 29 should be amended to force it to do so.

58. *I RECOMMEND THAT the Ministry continue its programme of establishing standards to be met by children's aid societies in all areas of service to children and families, particularly in relation to the protection of children from abuse. Those standards should be subject to ongoing study and revision by the Ministry's personnel in the light of the experience of the Ministry and children's aid societies with those standards. The Ministry should affirm its desire and willingness to receive and consider comment upon its previously published standards and recommendations with a view to revision thereof if necessary or desirable. The Ministry should ensure that copies of these standards are made available to every children's aid society and, through each children's aid society, to each social worker in* the employ of that children's aid society. The Ministry should maintain a service to ensure that every children's aid society and every social worker in the employ of the children's aid societies is advised of any revision of the standards. The standards should be accompanied by explanatory and supporting material and, particularly for the supervisory employees of the children's aid societies, materials to be used by supervisory personnel during instruction or training of subordinate personnel in relation to the standards. Each children's aid society shall ensure, by adequate instruction and training of its personnel in relation to the standards and by adequate supervision of the work of each of its social workers, that the standards of service established by the Ministry are met or exceeded. The Ministry in its turn shall ensure, by adequate supervision and inspection of each children's aid society, that such standards are met or exceeded. The Ministry shall furnish to the president and local director of each children's aid society a written report upon any such supervision and inspection.

RECOMMENDATION #59

There was an abundance of testimony to indicate that there were great differences among children's aid societies in the bases or criteria used to establish that a case or report of child abuse was one to be recorded in the files of the particular children's aid society as being a case of child abuse or in respect of which any report was required to be made to the Ministry for any purpose, including the Central Registry. It was that lack of uniformity in recording and reporting which formed one basis for testimony as to the uncertain value of statistics as to the incidence of child abuse in all jurisdictions, including Ontario.

This problem relates particularly to the effective function of the Central Registry both as a means of monitoring cases of child abuse and assisting local children's aid societies with any problems therein and as a means of obtaining information from which accurate statistical material can be prepared.

The testimony and the literature referred to upon the Inquiry suggest or state that there are no statistics which can be shown to be entirely reliable to indicate the full measure of child abuse in Ontario and elsewhere.

One of the difficulties in seeking to determine the accuracy of particular statistical material is the absence of uniformity of terms and of standards of reporting. In this Inquiry that was stated to be one of the major difficulties of obtaining useful material from the Central Registry of Child Abuse informally established and maintained by the Ministry from 1966.

Another difficulty mentioned was simply the difficulty of establishing to any satisfactory level of proof that a particular injury was caused by abuse and not by accident as claimed by the child's parent or parents. Witnesses upon the Inquiry and literature they mentioned questioned the reliability of statistics. The general view appeared to be that there were many more instances of abuse than the statistics would indicate.

That position related to injuries as serious as those Kim suffered and which cause death as well as to less serious physical injuries and to other types of harm such as emotional damage which may be more serious and long-lasting than physical impairment.

The very nature of child abuse and the statistics which are available explain the problems encountered by those who seek to establish any statistical base for their opinions.

Parental abuse of a child often, or even usually, occurs in some private setting out of the sight or hearing of others. The abused child is usually under the age of three and so is too young to express any complaint to anyone. The abused child, by reason of fear of the abusing parent or some other emotional factor, may be unwilling to complain to anyone even if able to do so. For some reason, perhaps identifiable only by psychiatric or other examination of the child, the abused child may feel some sense of guilt and, thus, responsibility for the abuse he or she suffered. Sometimes, as in Kim's case, the abused child dies as a result of the abuse and so is unable to complain.

The authors of the Garber Report set forth a recommendation as follows:

> "4. That guidelines for inclusion of data and diagnosis emphasize uniformity of reporting. Staff support at the Ministry should be made available to assure that the system now being formulated can be made operational and guidelines for record keeping by local children's aid society's be developed and standardized across the province."

Dr. Sohn in his testimony expressed the view that that recommendation related particularly to the operation of the Registry. He said the Ministry was preparing material which he felt would implement that recommendation at least in relation to the Central Registry.

On the basis of the testimony as to good intentions of the Ministry which are not fulfilled for a variety of reasons, and thus, lest the recommendation of the Garber Report has not been implemented, I make the following recommendation.

This is another recommendation written in full knowledge of the provisions of paragraph h of subsection 2 of section 2 and subsection 3 of section 6 of the present Child Welfare Act. The full benefit of implementation of this recommendation will be achieved only if the Ministry regards the legislation as imposing upon the Minister, in mandatory terms, a duty to prescribe standards of service and practice and procedures and then a duty on the Director to ensure that the children's aid societies adhere thereto and comply therewith.

If the Ministry interprets the legislation otherwise the legislation should be amended to achieve the desirable and necessary result.

59. *I RECOMMEND THAT the Ministry ensure that the intention of the authors of the Garber Report as expressed in their recommendation numbered 4, be fulfilled and that standards be established, kept current, published and enforced so that there will be uniformity in the bases and criteria employed by children's aid societies in preparing their own records in respect of child abuse cases or reports and in preparing reports thereon to the Ministry or other authorities.*

RECOMMENDATION #60

I have written of the testimony which expressed concern about the failure of the public generally and professional persons in particular to comply with the statutory duty to report incidents of abuse to children or concerns for the well-being or safety of children.

The following recommendation is intended as a means of ensuring that all persons employed in or about public hospitals are aware of the statutory provisions and comply with them.

During the Inquiry there was testimony and discussion alluding to procedures whereby hospitals received accreditation in recognition of their attainment and maintenance of defined standards of service and care. The details of those procedures were not examined.

The Garber Report contained a recommendation based on its acceptance of the need for the formation and maintenance of multi-disciplinary teams to deal with child abuse and for the participation of medical and hospital personnel in the function of such teams.

That recommendation also recognized the basic problem which, as I have noted, was encountered by everyone who had to decide what circumstances would justify or require any report to be made to a children's aid society or Crown attorney.

However in the case of physicians, nurses and hospital personnel there is an added dimension to the basic problem. The testimony upon the Inquiry and literature referred to in testimony show that properly trained medical personnel may, upon observations made even prior to a child's birth and immediately after birth, form the opinion that a child may be a high risk child from birth or from discharge from hospital.

It may be that the reference in section 41 of The Child Welfare Act to a child's "need for protection" as a basis for a report to a children's aid society or Crown attorney would require and justify medical personnel to make such a report immediately upon forming such an opinion.

But there was testimony that professional opinions not supported by "hard" evidence of abuse, such as marks of physical injury, were not sufficient to satisfy the courts. The testimony was primarily directed to evidentiary problems in relation to opinions of social workers, not medical doctors, but some of the testimony was expressed more broadly. Similarly that testimony was not primarily related to any statutory duty to report, but it seems to me that anyone forming such an opinion, before the child and mother are released from hospital after the child's birth, would have some concern as to whether such an opinion would be sufficient to justify or require the person forming that opinion to make a report thereon to a children's aid society or Crown attorney.

Accepting the validity of the testimony as to the ability of physicians to form such opinions with a satisfactory degree of accuracy, it would seem to me that it should be made clear to hospitals and physicians that an opinion formed even prior to the child's birth that the child from birth or discharge from hospital will be a high risk child is sufficient to require a report to be made to a children's aid society under The Child Welfare Act. Such an opinion would indicate the child's need for protection from birth.

The basis for such an opinion is discussed in connection with recommendation number 48 in this Report.

The recommendation in the Garber Report is:

> "11. That hospital accreditation procedures should include standards for reporting child abuse, and for participation on multi-disciplinary child abuse teams."

I endorse that recommendation. Lest it has not yet been implemented, I make the following recommendation.

60. *I RECOMMEND THAT the Ministry take all appropriate and necessary steps to ensure that accreditation of public hospitals will require or involve such hospitals to meet or exceed specified standards for actions to be taken, procedures to be followed and reports to be made by the personnel of such hospitals, including medical practitioners enjoying any privilege therein, in any instance of abuse or suspicion of abuse or professional opinion of any of the hospital's personnel qualified to express such an opinion that the child, even from birth, will be a high risk child. Such actions and procedures shall include participation in the discussions and decisions of any multi-disciplinary team of persons formed or requested by a children's aid society to assist in any phase of the investigation, management or treatment of any case of child abuse.*

RECOMMENDATION #61

As I have noted Dr. Bates and others who testified upon the Inquiry spoke of matters which might be regarded as indicating that a child may be a "high risk child" even from birth. Some of those factors would most likely be first noticed by the medical or hospital or public health personnel providing pre-natal care and then by those attending upon the birth of the child and then providing post-natal care.

The factors might be rooted in one or other of the parents of the child. For example, he or she may be seen to be immature and incapable of providing appropriate care to the child.

The factors may be rooted in other circumstances in the home to which the parents intend to bring the child. For example, it may be that the home is occupied or frequented by persons known to have abused other children.

The factors may be rooted in the child. He or she may be suffering from some deformity or illness. He or she may be unwanted or may be wanted, but wanted for the wrong reasons.

Medical and hospital personnel and public health nurses are likely to be among the first of any professional group to have contact with the new born child and the parents.

In Kim's case The Lambton Health Unit did have reason to visit with and to advise Jennifer Popen even prior to Kim's birth.

Dr. Jumean attended Jennifer Popen during her pregnancy with Kim. He attended Kim and Jennifer Popen after Kim's birth.

Other medical and hospital personnel were involved in some elements of the lives of Jennifer Popen and Kim during that same time.

I accept Dr. Bates' testimony that it is possible for medically trained and experienced persons to detect, accurately identify and correctly assess factors which may indicate that a child may be a high risk child, one more likely than most to be abused, even from birth or discharge from hospital after birth.

Dr. Bates' testimony is supported by the writing of Doctors Fontana and Besharov in the work I have mentioned. They write of the need for careful supervision of the care of any newborn child who is determined to be in a high risk situation. They wrote as follows:

> "We must therefore develop child abuse preventive programs for the high risk population; the underprivileged; the handicapped, the drug addicted; the alcoholics; the woefully immature and the unwed single parents. The encouraged participation of these parents in early preventive programs that offer human support services will ensure that quality of life for child and parents that will not incite parental misbehavior."

The success of any such programme will depend upon the co-operation of medical, hospital and public health personnel with children's aid societies and others who participate in the various teams or groups suggested by so many of the witnesses.

It will be a co-operation initiated by the particular knowledge, skills, training and experience of physicians and nurses. It may go beyond the type of communication or report contemplated by section 41 of The Child Welfare Act as it was in 1975 and 1976 or even section 49 of The Child Welfare Act, 1978. It will require agreement and acknowledgement that if, even without "hard" evidence of abuse or even without opportunity for a child to have been abused, a properly qualified person has formed the opinion that the child, even from birth, is a high-risk child, then the person forming that opinion must report thereon to a children's aid society and the children's aid society must then treat that report as it would treat any other report of information as to abuse of a child or a child's need for protection.

This is, in part, related to what Dr. Bates and others, including apparently the authors of the Garber Report in the preamble to their twelfth recommendation, sensed as an evidentiary problem in court proceedings related to child abuse. They sensed that there was a tendency for courts to reject or not act upon the professional opinions of social workers and others not accompanied by "hard" evidence of injury to the child.

With all due respect I would hope that Dr. Bates and the others are in error in arriving at that conclusion. In my view, assuming that the court has been satisfied as to the expertise of the witness presenting the opinion and that the testimony is not otherwise successfully attacked or discredited, the rules of evidence presently applicable would enable a court to admit such testimony and to act upon it in an appropriate case.

61. I RECOMMEND THAT the Ministry, in co-operation with other appropriate ministries of government, ensure that physicians and nurses, in private practice or in the employ of public hospitals or public health bodies, who provide care, whether pre-natal or post-natal or both, to mothers and children receive special training to enable them to detect, recognize and assess any matter which might indicate that any child, even a new-born child, may be a "high-risk" child. Hospitals and public health bodies should provide in-service training on such matters to doctors and nurses on their staffs or enjoying any privilege in their facilities to ensure that they remain current. Such training should emphasize that if a doctor or nurse, having recognized the presence of any such matter, should form the opinion that a child may be a "high-risk" child he or she is, by the Child Welfare Act, required to report such opinion and the information or observations on which it is based to a children's aid society.

RECOMMENDATION #62

There may be concern on the part of physicians and nurses, and their employers if they are on the staff of a public hospital or public health body, that any such report, based solely on a professional opinion without any hard evidence to supplement it, would not ensure that the provisions of the Child Welfare Act would be available to protect the physician or nurse or employer from civil proceedings based on the making of the report.

In my view the establishment and function within the public hospitals and health bodies of teams of doctors and nurses to deal with child abuse should remove the concern of individual practitioners and ensure the validity of any opinion expressed as to a child's need for protection even in the absence of "hard" evidence.

There is no reason that this be restricted to reports in respect of new-born children. There may be factors present in an older child's life to indicate, without hard evidence, that he or she may be in need of protection.

Any concern of doctors and nurses in respect of reports based solely on professional opinion should be allayed. In my view the Ministry is in a position to do that with the co-operation of other ministries of government. However, lest there be any lingering concern in the mind of any physician or nurse which might inhibit him or her from making a report based solely on opinion, the concern should be removed by legislative action.

62. I RECOMMEND THAT the Child Welfare Act be amended to ensure that no action for making the report shall be instituted against any doctor or nurse who reports to a children's aid society that in his or her opinion a child may be in need of protection although there is no "hard" evidence of abuse of the child or the child's need for protection, provided the report is not made maliciously and the opinion is not expressed maliciously.

RECOMMENDATION #63

Another area of concern related to the absence of adequate lines of communication between the social workers of the Society and Mr. Lovatt, the Local Director, and the Board of Directors of the Society. The Farina Committee commented upon that lack. It was apparent from other testimony upon the Inquiry.

One prominent example of that deficiency of communication, as well as of recording, was the disagreement which became evident in February, 1976 when Police Constable Wyville, Police Constable Charlton, Mrs. Kirby and Mr. Carter visited Mrs. Harvey in her office to express concern about the suggestion, apparently bruited about in the Society, that Kim was to be returned to her home. The files of the Society do not record any of the events of that day. But neither Mrs. Kirby nor Mr. Carter, although they had strong opinions, went beyond Mrs. Harvey to express any concern to Mr. Lovatt. They seemed to think it was not appropriate to do so.

There was some testimony to the effect that Kim's case was the subject of much discussion or rumour among personnel of the Society long before it came to the attention of the Board of Directors late in 1977. Clearly Mr. Carter and Mrs. Kirby had been concerned enough about the case in February, 1976 to approach Mrs. Harvey to express opposition to the belief somehow formed by them and Police Constable Wyville and Charlton that Kim might be returned to her parents.

It was to my mind a serious reflection upon the administration of the Society that no one in the employ of the Society saw fit or felt free to raise the matter with Mr. Lovatt. It is an equally serious reflection upon the Society and its organization that no one in the employ of the Society or even outside of its employ, such as the two police officers, saw fit to mention any concern to the Board of Directors as a Board or to any individual member thereof with the hope that the Board would be informed and would then take appropriate action.

To my mind the most telling testimony as to absence of lines of communication within the Society was that which revealed that until December, 1977 the Board of Directors of the Society was not aware that Kim was, by court order, in the custody and care of the Society when she died in August, 1976 as a result of abuse inflicted upon her. Apparently no one who knew anything about the case saw fit to mention it to the Board or to any member thereof during the intervening periods of about fifteen months.

Maybe in one sense that was a microcosm of our society generally and its unwillingness to become involved in the affairs of others. Maybe it was not unlike the incidents in cases mentioned by witnesses wherein neighbours or others chose not to report to anyone upon observations of what might have been child abuse. Maybe it was simply an example of a tolerance of our society, perhaps something like the varying tolerance of different communities for conduct which is acceptable or is not acceptable.

There was testimony too that even when Kim's case was raised at a meeting of the Board of Directors in December, 1977 some members of the staff of the Society who were there felt that the full and correct story was not told to the Board. But they remained silent.

I am aware that it is necessary for supervisory personnel to make decisions which may not be well-received by subordinate personnel. Subordinate personnel should not be encouraged to appeal as it were every such decision regardless of its content or importance. But certainly if the subject matter is one of critical importance, whether to the welfare of one child such as Kim or to the overall operation of the children's aid society, the concerned employee should have a means of expressing disagreement with or concern about the decision with the hope that it will be received by a higher authority within the society. The board of directors of each children's aid society should ensure that such a means of expression is available to every employee to be used, hopefully, only in appropriate circumstances. The procedure should ensure that the subordinate staff member is not deterred by fear of reprisal and that the supervisory or managerial staff does not feel threatened when a particular decision is questioned. Ideally the subordinate and the supervisory employees would join in the request to the higher authority for review of the decision. Social work is not an exact science. Judgement is involved. No one person always has the correct answer to every problem.

In my view insistence upon employment of the team approach in cases of child abuse should minimize the instances of decisions which anyone might choose to question or to refer to high authority. But there will be instances where a minority of the team may wish to seek the opinion of the appropriate supervisor, the local director or even the board of directors.

On the testimony it was clear to me that social work, or at least that portion of it discussed upon the Inquiry, is not an exact science in which there is only one correct answer to a particular problem. So much is based on judgement or on assessment of a situation. From time to time upon the Inquiry a witness would state as much, saying that while he or she could not quarrel with a particular act of a social worker then being reviewed, he or she would have preferred that the social worker had done something else or something further. No one should, out of embarassment or fear of reprisal, hesitate in appropriate cases to bring any difference of opinion to the attention of a supervisor, local director or board of directors of a children's aid society. Similarly no supervisor or local director should feel any embarassment or anger because his or her opinion has been questioned.

Upon the testimony of highly qualified witnesses upon the Inquiry I am satisfied that it is imperative that the manual of practices and procedures of each children's aid society contain provision whereby a social worker, not satisfied as to a decision by a supervisor, without any embarrassment for either the social worker or the supervisor and without any fear of reprisal, may bring the matter to the attention of the local director for resolution. Similarly if the resolution by the local director is not satisfactory to either the social worker or the supervisor, there should be provision for the matter being presented to the board of directors or an appropriate committee thereof for resolution.

63. *I THEREFORE RECOMMEND THAT as part of its practices and procedures each children's aid society establish a process whereby any one or more of its social workers, concerned about the propriety or correctness of any decision made or proposed to be made in any case, may, without fear of reprisal and without appearing to threaten the authority or position of the team of social workers, the supervisor or the local director, as the case may be, bring the case and the particular decision to the attention of a supervisor, the local director or the board of directors, as the case may be, for review and determination. In the same vein the practices and procedures of each children's aid society should enable each employee to have a means of ensuring that full information about any case is available to any supervisor or the local director or the board of directors.*

RECOMMENDATION #64

I have expressed the belief that workers engaged in any phase of a report or case of child abuse should have access to legal advice and should use it. That is contained in Recommendation #36, and I want now to expand thereon.

The testimony upon the Inquiry strongly supported and illustrated the need for children's aid societies to be represented by counsel in certain proceedings. In Kim's case the Society proceeded without any legal advice whatsoever. It may be somewhat ironic, but one of the stronger statements expressing that need came from Mr. Higgins. He had represented Jennifer Popen and Annals Popen in the proceedings in the provincial courts in respect of Kim. He had succeeded in preventing the Society from doing what it should have done. The Society sought no advice or assistance to overcome him.

After recommending that there be an improved means of communication between the children's aid society and other bodies, including, in Kim's case, public health, probation service, hospitals and police after the finding that Annals Popen had failed to protect Kim, Mr. Higgins testified:

> "...Any combination of those organizations should be able to retain Counsel...I mean qualified legal counsel, if the staff spokesperson for Court work is not ideally qualified and this should be possible without any budgetary constraints from anywhere, whether it be Toronto or Ottawa. I'm sure that the Children's Aid Society would have had counsel throughout if their budget had permitted it. There should be absolutely no connection between the local budget and the ability to retain counsel by the Children's Aid Society for example."

He went on to enlarge upon that by saying:

> "...Now, then, before a conviction for child abuse or in the event of a wardship situation, it seems to me that the Children's Aid Society, which would be the

> only agency involved that ought to be able to have as much freedom in employing counsel as they would be if a conviction had been registered and a child perhaps were going to be returned.
> One of the problems here has also been that the Crown Attorney's office has been asked to or has somehow or other been involved in this thing and the difficulty with their staff is they can never be sure the same Crown Attorney will be involved in one case from beginning to end had that been the case, things would have been certainly more efficiently dealt with.
>
> Q. So you would suggest that the same Crown Attorney be seized of this matter and follow it right through?
>
> A. Well, if it's a quasi criminal charge, yes but if it's a wardship situation, then I think that the Children's Aid Society should have their own lawyer or should have the ability to employ counsel without references to any contraints at all in budget.
> Now then, my observation is...I might say that I even think that a qualified lawyer might have had a good crack at making me toe the line in so far as letting Mr. Carter see the children."

He added some comment as to what steps counsel retained by the Society might have taken to overcome his tactic which had effectively stopped Mr. Carter and the Society.

Again ironically, Mr. Carter, who was the direct target of Mr. Higgins' tactic, testified as to his difficulties with opposing lawyers generally. He said:

> "...and then of course with the Legal Aid situation I found my role in a court hearing has become increasingly difficult without having legal protection for myself or the child before the court.

> Q. You mean more and more parents and children are being represented by counsel?
>
> A. Exactly, often by two separate legal representatives in the case of a separated family.
>
> Q. Right.
>
> A. So it becomes a very difficult - and the focus is certainly not on the child."

I understood him to use the words "legal protection" in the sense that it would be provided or ensured by representation and advice by counsel.

Mr. McPhedran expressed his belief that each children's aid society should have effective legal counsel. Because of the increasing complexity of social legislation and because of the concern for the rights of each individual, it was his opinion that, if it was involved in any way in any contested proceeding, a children's aid society should be required to be represented by counsel.

Inspector Ross expressed his opinion that each children's aid society should be represented by experienced trial counsel in all proceedings relating to the custody of children.

In the main body of the Report I have commented upon the inadequate representation of the Society upon the hearing of its application for an order declaring Kim to be a child in need of protection. That inadequacy related not only to the actual time in court in February, 1976 and on earlier occasions, but also to the preparation of the application from September, 1975 onward and to the steps taken by the Society after February, 1976 to and including the application in July and August, 1976.

In my view, if the Society had been represented by counsel that counsel would have ensured that the preparation for hearing in February, 1976, and hopefully earlier, was more complete, that Mr. Higgins did not succeed in his effort to deter Mr. Carter, that witnesses were present, that, subject to rulings upon the admissibility of evidence, all of the information obtained upon a thorough investigation and the opinions of qualified social workers upon social work matters were presented, that a written report upon the proceedings, the reasons for judgement and any other matter was prepared for the Society's file and that consideration was given to what might next be required to continue to protect Kim.

All of the foregoing relates to the Society's application. But there were also the concurrent proceedings resulting from the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act.

In my view, counsel for the Society would have maintained a close liaison with the Crown Attorney and the Sarnia Police Force to exchange information and opinions and perhaps even to develop some common strategy in relation to the two proceedings. For example, if the investigation by police officers had revealed something not previously known to the Society, counsel for the Society would certainly have taken steps to seek to have that information presented to the Court upon the Society's application. That would apply as well to information such as that contained in the pre-sentence report upon Annals Popen together with Dr. Curtin's notes attached thereto. I am confident that counsel for the Society would have maintained a watching brief in the prosecution and would have prepared a detailed written report, with copies of documents such as the pre-sentence report and its enclosures, to be placed in the Society's file.

The Board of Directors of the Society recognized the need for the provision of legal services to the Society and its staff. That recognition was expressed by its resolution in January, 1976, making private funds available for such purposes. That resolution was passed in response to Mrs. Harvey's expression of the need for such services in cases involving abuse.

In 1978 the authors of the Garber Report expressed their opinion in this area by their recommendation numbered 12 which was written as follows:

"12. That in all child abuse court proceedings the Children's Aid Society must be represented by counsel; in all uncontested cases the Children's Aid Society should have access to legal opinion, in order to fulfill its protection mandate."

The matters that may arise from a report or instance of abuse are complex. At each stage, from the initial investigation until the very end, there may be questions relating to the rights, powers, obligations and duties of a children's aid society and its personnel, the relationship of a children's aid society with authorities or institutions or other community organizations, the confidentiality of material, the nature of the evidence to be sought or presented, the nature of any application to a court and countless other matters. These are essentially questions of law and procedure. Just as it is unfair to a social worker to ask him or her to express essentially medical opinions based on observation of a child, so is it unfair to ask that social worker to express essentially legal opinions.

In Kim's case, money was available for legal services. Its use was at Mr. Lovatt's discretion. That was known to Mrs. Harvey. That money was not used. It therefore seems that social workers may not recognize the full nature of their need for legal advice and assistance at various times. Mrs. Harvey's statement to Mrs. Farina declining the invitation to the seminar for court workers of the children's aid societies was an example of her inability or refusal to recognize her own limitations.

64. *I RECOMMEND THAT each children's aid society should employ or retain the services of one or more solicitors, preferably with training or experience in relation to family law, child welfare and child protection and with skills of advocacy. The advice of such a solicitor should be immediately available to the society's social workers at any time in relation to any report or instance of abuse or suspected* abuse. The society's social workers should be required to consult with such a solicitor at appropriate stages of the investigation of such report or instance of abuse and subsequently in relation to any decision to be made during the management or treatment of the case including court proceedings of any sort. The solicitor should be advised of all conferences in relation to the case whether within the children's aid society or elsewhere, such as at the community child abuse team, and the matters to be discussed thereat. The solicitor should be required to attend such conferences if, in his or her opinion, the subject matter may involve matters of law or procedure, or if any social worker participating in the conference requests that the solicitor attend. All of that should form part of the society's manual of practices and procedures.

RECOMMENDATION #65

Counsel for the children's aid society will recognize whether any information obtained by the children's aid society during its investigation of any report or instance of abuse might be of interest to the police or Crown attorney. Such counsel should also be aware of any earlier involvement by the police or Crown attorney in the matter. There should be a policy of the society to require its counsel to establish and maintain a relationship of co-operation and mutual assistance with the police and Crown attorney in relation to reports and cases of child abuse.

65. I RECOMMEND THAT counsel employed or retained by the children's aid society in respect of any report or instance of child abuse should establish and maintain liaison and co-operation with the Crown attorney and police to determine whether or not, in relation to the matter, any charge under the Criminal Code, the Child Welfare Act or any other statute, is contemplated by the Crown attorney or police or, in the light of information available to the children's aid society, should be considered. In the event any such charge is laid counsel for the children's aid society should co-operate with the Crown attorney to ensure an orderly and complete investigation and then, if required, an efficient procedure in court to complete all matters including the prosecution of any such charge and any application which the society may make in respect of the care of the child. That duty to co-operate corresponds to the duty of the Crown attorney and police to co-operate with the children's aid society as set forth in a subsequent recommendation.

RECOMMENDATION #66

That then leads to consideration of the prosecution of Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act. It was a proceeding closely related to, but yet quite separate from the Society's application for custody of Kim. In relation to the immediately preceding recommendation I have written of the need for the liaison which counsel for the children's aid society upon any child welfare or child care matter should maintain with those responsible for the conduct of the prosecution of any criminal or quasi-criminal charge relating to the same matter.

The separation of the two proceedings in Kim's case arose naturally enough because of the involvement of the Sarnia Police Force and its perception of its duty to enforce the law. Appropriately the police officers sought and obtained advice from the Crown Attorney with reference to the nature of the proceedings and the presentation of the case in court.

Unfortunately the separation of the two matters was maintained and there was not adequate liaison between the Society on the one hand and the police and the Crown Attorney on the other.

In my view that came about primarily because Mrs. Harvey and Mr. Carter, for the Society, were not fully or correctly aware of the relationship between the two proceedings. They did not correctly understand the implications of decisions reached by the Crown Attorney and police in relation to the charge against Annals Popen and Jennifer Popen. They understood that the decision to withdraw the charge against Jennifer Popen had prevented or impeded the presentation of all evidence that they would otherwise have adduced upon the Society's application for custody of Kim.

That arose, at least in part, because they had not sought the legal advice which Mrs. Harvey, at least, knew was available. It arose also because of their ignorance of the law, an ignorance which Mrs. Harvey had implicitly denied when she declined Mrs. Farina's invitation to attend the workshop for court workers employed by children's aid societies.

There was testimony upon the Inquiry to the effect that the involvement of the Crown Attorney was desirable in relation to charges under section 40 of The Child Welfare Act.

His Honour Judge Nighswander said that the Crown Attorney should be involved whenever such a charge was laid. He said however that was not the practice anywhere in Ontario.

Mr. Hibberd expressed a similar view. He thought the Office of the Crown attorney should be more involved in some of the proceedings in the provincial court (family division).

Mr. Higgins supported the concept of the Crown attorney being involved in any prosecutorial proceedings under The Child Welfare Act. He refined that somewhat to suggest that greater efficiency would be achieved if one member of the Crown attorney's staff were assigned responsibility for the carriage of one matter from beginning to end.

I am aware of the provisions of subsection 3 of section 40 of The Child Welfare Act which permitted the judge conducting the trial of a charge laid under section 40 to hold a hearing and proceed as though the child had been brought before the judge as a child apparently in need of protection.

There was some testimony as to the need or desirability of joining or consolidating proceedings such as prosecution of a charge under section 40 of The Child Welfare Act with an application for an order declaring the child to be a child in need of protection.

That testimony was not firm and conclusive. At best it was tentative and indicated that the decision upon the point in any given case would be a matter depending upon the judgement of those responsible for the carriage of the two matters.

There was no testimony that such joinder or consolidation was considered by anyone in Kim's case.

It is open to the judge conducting the trial of a charge under section 40, on his or her own motion or on the motion of the person prosecuting the charge, to treat that trial as a hearing of an application for an order to declare the child to be a child in need of protection.

Such an order for enlargement of the scope of the proceedings so as to include a charge under section 40 would not seem to be possible upon the hearing of an application such as that brought by the Society in respect of Kim.

In my view this is an area that might very well be the subject of liaison between counsel for a children's aid society and the Crown attorney and police officials. There may be valid reasons for the society wishing not to be identified directly with the prosecution of a parent lest such identification hamper the society in performance of other services to the same family at the time or later. However, apart from such considerations, the overall convenience of everyone and economy of time and effort would seem to favour the two matters proceeding as one or at least being heard together.

Perhaps because of lack of communication or understanding, there were a number of procedural problems in Kim's case. The two matters began in separate divisions of the provincial courts and were scheduled for hearing or trial on separate dates. Even after both were within the provincial court (family division) they were heard on separate dates.

Two groups, the Society upon its application and the Crown attorney and Sarnia Police Force upon the charge under section 40 of The Child Welfare Act, were responsible for separate investigations and preparations and for attendances of witnesses and for presentations in court.

Mr. Carter spoke of assumptions he made as to what police officers would do in investigation and preparation and, presumably, make available to the Society for its use upon the hearing of its application for custody of Kim. He told no police officer or the Crown attorney of his assumptions. In the result there were delays, witnesses were not available and some things which Mr. Carter expected to be done by others, such as police officers, were not done.

Employees of the Society claimed to be unaware of the intentions of the Crown attorney and Sarnia Police Force in the disposition of the charge under section 40 of The Child Welfare Act. While I rejected that claim, the very fact it was made illustrates the need for close and ongoing liaison between a children's aid society pursuing one proceeding and others, such as the Crown attorney and police, pursuing other procedures in respect of the same child.

Employees of the Society stated that the disposition of the charge under section 40 of The Child Welfare Act disrupted their entire approach to the Society's application and inhibited the introduction of evidence upon that application. They were in serious error. That was entirely of their own making. It resulted from their own ignorance of the law, particularly The Child Welfare Act, and their failure to obtain legal advice.

All of that could have been and should have been prevented by proper preparation for trial or hearing. In large measure the testimony to be adduced in support of the Society's application would incorporate, but would not be limited to, the testimony to be introduced in support of the prosecution of the charge under section 40 of The Child Welfare Act.

In addition to removing such substantial errors and misunderstandings co-operation between the children's aid society and others can achieve a more efficient use of the court's facilities and of the time of all concerned whether as counsel, agent, witness or party. Parties of somewhat common interest would not have to duplicate their efforts, but could exchange information and opinions and could apportion some tasks, such as securing attendance of witnesses, to one or the other as seemed most appropriate.

66. *I RECOMMEND THAT, if a charge under section 40 of The Child Welfare Act be laid by the police, a children's aid society or a private complainant, the Crown attorney be advised forthwith and thereafter the Crown attorney shall be responsible for*

the conduct of the prosecution of any such charge or for staying or withdrawing it. The justice before whom any person appears for the purpose of swearing an information alleging the offence should be responsible for ensuring that the Crown attorney is so advised. That latter may require the Ministry to obtain the co-operation of the Ministry of the Attorney General.

RECOMMENDATION #67

In Kim's case Mr. Hibberd appeared in court on very short notice to represent the Crown attorney upon the trial. He knew little about the case. That and what ensued from it demonstrated the value of Mr. Higgins' suggestion that one solicitor in the office of the Crown attorney be responsible for the prosecution of any charge from its inception to its conclusion. It may have been unfair to Mr. Hibberd. It certainly did not advance or protect Kim's interests.

Adoption of Mr. Higgins' suggestion would certainly ensure that the person in the office of the Crown attorney responsible for the case had sufficient time to prepare adequately for trial. It would probably ensure that in preparation for trial a complete liaison was established and maintained with all interested persons, such as the personnel of the children's aid society involved in the care of the child. In Kim's case there was no testimony to indicate any direct liaison between the Society and the office of the Crown attorney. Such liaison will be more likely and useful if the children's aid society has counsel instructed in relation to the case.

67. *I RECOMMEND THAT the Crown attorney, if not accepting the responsibility himself or herself, assign one solicitor employed or retained by the Crown attorney to have full responsibility for the conduct of the prosecution of any charge under section 40 of The Child Welfare Act.*

RECOMMENDATION #68

In my explanation of an earlier recommendation I set forth my view that counsel for a children's aid society in any court matter involving a child should maintain liaison and co-operation with the Crown attorney and police and exchange information and assistance if the Crown attorney or police are considering or have laid a charge under section 40 of The Child Welfare Act as a result of anyone's treatment or abuse of that child.

In my view there is a corresponding need for the Crown attorney and police, considering or having laid such a charge, to maintain such a liaison and co-operation in relation to information and mutual assistance with the children's aid society responsible for the care and protection of that child.

68. *I RECOMMEND THAT the police, as well as and the Crown attorney or solicitor responsible for the conduct of the prosecution of a charge under section 40 of The Child Welfare Act, immediately establish and maintain liaison and co-operation with the local children's aid society. One purpose of such liaison would be to discuss and to determine whether or not an application should be made in court for an order declaring the child to be a child in need of protection and, if such an application should be made, by whom and by what process. That liaison and co-operation should involve all phases of the two proceedings, whether or not they are joined, and should continue until both are completed. That duty to co-operate corresponds to the duty of the children's aid society to co-operate with the Crown attorney and police which is set forth in a preceding recommendation. This will involve* *the co-operation of the Ministry of the Attorney General and the Ministry of the Solicitor General with the Ministry.*

RECOMMENDATION #69

The testimony upon the Inquiry indicated that the professional staff of the Office of the Crown Attorney were over-burdened during Kim's lifetime.

That was demonstrated by the way in which the prosecution of Jennifer Popen and Annals Popen under The Child Welfare Act proceeded. Mr. Lang was originally consulted, a part-time Crown attorney appeared on at least one occasion when the trial was delayed because of the non-attendance of witnesses, Mr. Lang was again consulted and finally Mr. Hibberd, on short notice and with inadequate information and preparation, appeared upon the trial.

I recognize that officials of the Ministry of the Attorney General are aware of the varying demands upon the offices of Crown attorneys throughout Ontario and seek to ensure that each such office has personnel and facilities to meet the demands upon it.

However the preceding recommendations cannot be implemented unless the Crown attorney has the necessary personnel and facilities. This should be of concern to the Ministry.

69. *I THEREFORE RECOMMEND THAT the Ministry, through appropriate channels of government, seek to ensure that the Crown attorney in each county and district in Ontario be provided with sufficient funds to ensure that personnel and facilities are available to each such Crown attorney to enable implementation of recommendations in this Report requiring the involvement of the Crown attorney.*

RECOMMENDATION #70

The following recommendation relates to another area of the responsibility of the Ministry of the Attorney General.

During the Inquiry there was considerable uncontradicted evidence as to the lengthy delays in the hearing of matters in the Provincial Court (Family Division) of the County of Lambton. One reason for those delays was that Judge Nighswander was required to devote about one-half of his time and efforts to matters in the Provincial Court (Family Division) of the County of Kent.

The uncontradicted testimony was that speedy disposition of child welfare matters is essential for the welfare of the children affected thereby. If a child has been removed from a family home it is imperative that all concerned know quickly whether or not the child is to remain in the care of a children's aid society, and, if so, on what basis. Only then can adequate plans be made for the care and protection of the child by the society.

Apart from the delay from June until September, 1975, Kim remained in limbo as it were from September 1, 1975, until February 25, 1976. During that period no plans for her long term care could be made with any certainty that she would remain in the care of the Society to enable implementation of those plans.

Clearly the six month delay arose from many causes. But one cause certainly was the inability of Judge Nighswander, because of his other duties elsewhere and lengthy lists of matters to be heard, to fix early dates for hearing or trial. Kim's was not the only case affected by that inability.

I am aware from the testimony that, subsequent to March, 1976 and Judge Nighswander's retirement, a judge was appointed with responsibility only to hear matters in the Provincial Court (Family Division) of the County of Lambton. That should reduce delays resulting from insufficient time being available for the Judge sitting in that Court.

However, it would seem that the problem existed for some time before it was corrected. Kim and others were affected by it. A similar situation should not be allowed to arise.

I am aware that the Ministry of the Attorney General, responsible for the administration of the courts, maintains a procedure to record the number of matters commenced, dealt with and disposed of in each court. Those records may enable one to ascertain the number of proceedings which arise from allegations of abuse or from the apparent need of children for protection under The Child Welfare Act. Even so it is my view that the Ministry and children's aid societies have a particular and special interest to ensure that the provincial courts (family division) are able to deal expeditiously with cases involving child abuse or children apparently in need of protection.

70. *I THEREFORE RECOMMEND THAT the Ministry, the Ontario Association of Children's Aid Societies and the children's aid societies in Ontario maintain an ongoing survey of proceedings under the Child Welfare Act in the provincial courts (family division) to ascertain whether or not any inadequacy in the facilities of those courts, including the numbers of judges appointed thereto, contributes to any unreasonable delay in the hearing and disposition of such proceedings particularly those involving allegations of child abuse or children apparently in need of protection. If such survey should indicate that there is, in any such court in any county or district, unreasonable delay in such matters because of any inadequacy of the court's facilities, the Ministry, through appropriate procedures of government, should seek to ensure that the facilities of that court are improved so as to prevent any such delay.*

RECOMMENDATION #71

Inherent in the comment upon the inadequacy of the representation of the Society upon or in relation to the presentation of its application in respect of Kim must be concern for the adequacy of the representation of Kim upon that proceeding and in relation to the charge under section 40 of The Child Welfare Act. Mr. Carter spoke of the difficulty arising from the absence of "legal protection for [himself] or the child before the court."

In my view Kim's need for "legal protection" was the greater of the two. Without wishing to be melodramatic, the very life of the child was at stake.

Hopefully implementation of other recommendations set forth herein will ensure the best possible preparation and presentation of the application on behalf of the children's aid society. Hopefully too such preparation and presentation will be in the best interests of the child. However it is not difficult to envisage instances where, for some particular reason, it may not be in the best interests of the child that the children's aid society succeed in its application or in some particular part of it.

One such instance which readily comes to mind develops from the testimony to the effect that in some instances removal of an abused child from the family home may not be in the best interests of the child. This is one of the areas that makes social work an inexact science where there may be a variety of answers to each problem and each of those answers might be viewed as being a correct answer.

The authors of the Garber Report state that research indicates that children's aid societies feel that representation of children's best interests has been inadequate.

In Kim's case the inadequacy of representation of her best interests was the inevitable by-product, as it were, of inadequate representation of the Society.

As their thirteenth recommendation, the authors of the Garber Report recommended that

> "13. Any child who is the subject of a child welfare hearing should be represented by his or her own lawyer, unless this is not recommended by the court."

There was testimony upon the Inquiry to the effect that the Ministry was prepared to accept that recommendation subject only to the amendment thereof to provide that if the court is of the opinion that representation of the child is desirable it may direct that legal representation be provided for the child. Presumably then such representation would be provided, but it was not clear just how that would be achieved or paid for.

That recommendation of the Garber Report, amended as suggested by the Ministry, was incorporated in section 20 of The Child Welfare Act, 1978. That section provides firstly that a child may have legal representation at any time in proceedings under Part II of that statute. That is merely permissive. The section then imposes upon the court the duty of determining whether legal representation is desirable to protect the interests of the child. If such representation is desirable, the court shall direct that legal representation be provided for the child. The section also sets forth circumstances which require the court to make such a direction.

The general concept of both the recommendation in the Garber Report and the 1978 legislation causes me no concern on the basis of the testimony upon the Inquiry. I do have concern about the specific form of the legislation. My concern relates particularly to the method of provision of representation and payment therefor. Who is to provide it? Who is to pay for it?

I understand the recommendation in the Garber Report to be that every child who is the subject of proceedings under The Child Welfare Act have separate legal representation unless the court hearing the matter otherwise directs. The legislation is somewhat the reverse of that approach. Representation is to be provided if the court directs it.

The legislation seems to contemplate two perhaps different situations. It provides firstly that a child may have legal representation. That is purely permissive. It makes no reference to how a child, under sixteen years of age by the terms of the legislation, may instruct counsel or arrange to pay for legal services. For example, one is left to wonder whether counsel retained for the child and paid by one or both of the child's parents or by a relative or a patron of the child might provide the independent legal representation that the recommendation in the Garber Report would seem to contemplate. This might raise for lawyers the same sort of problem that bothered some doctors who testified upon the Inquiry. Dr. Bates was not bothered. He was clear and firm. He said the child was his patient and he would act accordingly. Others were not so clear. They seemed to have some difficulty in seeing the child as an individual patient rather than as one of the members of a family which, perhaps collectively, were the patient. Those doctors might not act solely in the child's best interests without some consideration for what they perceived to be the best interests of the family of patients.

I would think that a solicitor, perhaps the solicitor who acted generally for the family, would be placed in an unenviable position if asked to represent a child upon some proceedings under the Child Welfare Act. The solicitor might very well represent the best interests of the child, but I do not know how the solicitor is expected to ascertain what are the best interests of the child. I think of the adage to the effect that not only must justice be done, but it must be seen to be done. Families are not always the cohesive units that fiction portrays as ideal. That must most likely be so if there is a suggestion that a child has been abused. Some of the family may agree and others may disagree with the position put forward on behalf of the child. In such a situation as the legislation would seem to contemplate the solicitor accepting such a retainer is bound to be damned by someone sometime no matter what he or she does or does not do.

There was testimony as to the feeling of some abused children which would lead them to blame themselves for having been abused by a parent or which would lead them to some desire to seek favour from an abusing parent and thereby, hopefully, avoid further abuse. On the basis of such testimony I am not prepared to accept that an abused child, under sixteen years of age by statutory provision, is able to determine what are his or her own best interests. Thus the child may not be able to instruct counsel even if one were to assume that in other circumstances a child might be able to do so.

That is all the more so when one recalls the testimony as to most incidents of abuse occurring before the child is three. Such a young child cannot know his or her own best interests.

It appears to me to be self-evident that the allegedly abusing parent or guardian or the spouse or partner of such parent is not able to determine the child's best interests and thus is not able to instruct counsel on behalf of the child.

To a lesser degree I would think that all other relatives of the child, who might in ordinary circumstances be expected to ensure the child's best interests, are similarly unable to determine the child's best interests and to instruct counsel on behalf of the child.

But subsection 1 of section 20 of the 1978 legislation provides that a child may have legal representation. There is no provision in the legislation as to what the judge might do if someone appears and purports to represent the child. There is no provision for any challenge to any counsel's claim to represent the child. It is not beyond the realm of possibility that there may be competing claims to represent the child.

Subsection 2 of section 20 would not appear to be helpful in resolving a dilemma such as I have mentioned. It appears to be specifically directed to the duty of the court "where on an application under this Part II [of the statute] a child does not have legal representation." Only then must the court decide whether legal representation is desirable and, if it so decides, it must then direct that legal representation be provided to the child.

I should note that subsection 1 of section 20 applies to "proceedings" under Part II of the statute. That would seem to be broad enough to include situations such as those mentioned in section 25 whereby a parent may voluntarily place a child in the care of a children's aid society, or those mentioned in section 44 relative to the religious faith of the child or those mentioned in sections 46, 47, and 48 which, in conjunction with section 94, provide that certain acts constitute offences and are punishable.

However, subsection 2 may be used upon "an application" under Part II. That would seem to be more limited than "proceedings" mentioned in subsection 1. Conceivably subsection 2 would not apply to matters such as I have enumerated in the immediately preceding paragraph. It might be argued that it would not apply to what a children's aid society might do in compliance with subsection 1 of section 27 which requires that, within certain time limits of detaining a child in a place of safety or assuming the care of a child,

> "the matter shall be brought before a court to determine whether the child is a child in need of protection."

or other things shall be done.

I am aware that section 11 of Ontario Regulations 386/79 made under The Provincial Courts Act provides that a proceeding shall be commenced by filing an application in the prescribed form. Thus all "proceedings" would appear to be "on an application."

I see no need for the use of different terms in the two subsections of section 20 of the 1978 legislation.

In my view the more inclusive term, "proceedings" would be preferable.

71. *I RECOMMEND THAT in all proceedings under the Child Welfare Act it should be incumbent upon the court in which the proceedings are conducted to determine*

whether separate legal representation is necessary or desirable to protect the interests of the child who is the real subject matter thereof. If the court determines that such representation is necessary or desirable it shall direct that it be provided. In making that latter determination the court should hear submissions, with or without testimony as the court may decide, from the parties to the proceedings as well as from anyone who may seek to be the child's legal representative to protect or advance the child's interest. Any direction for the provision of such legal representation should identify the solicitor or solicitors who shall provide it and shall provide for the remuneration of such solicitor or solicitors. Unless or until some arrangement is made for the provision of such legal representation under the Ontario Legal Aid Plan the cost thereof should be borne out of the general revenues of the Province of Ontario except in such cases where, with the knowledge and approval of the court, remuneration of such solicitor or solicitors is available and provided from some other source.

RECOMMENDATION #72

I have some difficulty with the language of subsection 3 of section 20 of the 1978 legislation. In subsection 2 it is provided that the court must direct the provision of legal representation if it determines such representation to be desirable. Subsection 3 then provides that "in determining whether [such] representation is desirable" the court must, in certain specified situations, direct the provision thereof. It would seem to be more correct to specify that in the circumstances described in subsection 3 the provision of such legal representation shall be deemed to be and shall be desirable. Subsection 2 would then become operative to require the court to make the appropriate direction.

72. I RECOMMEND THAT the Ministry consider the amendment of section 20 of the 1978 legislation to incorporate the preceding recommendation #71 and to provide that in the circumstances described in subsection 3 of section 20 the provision of such legal representation shall be deemed to be and shall be desirable.

RECOMMENDATION #73

There was testimony indicating a concern among social workers and others in the field that opinions in relation to child abuse expressed in testimony by social workers were not given much weight in the courts. I have mentioned that concern elsewhere in this Chapter.

The authors of the Garber Report wrote of comments and responses, presumably to them or their researchers, referring to "difficulties in obtaining and giving evidence, and the disposition of the Court to disregard any but unequivocal evidence of abuse."

Dr. Bates addressed that matter in the following portion of his testimony:

> "Q. Doctor, before we go on to the next slide, dealing with social workers giving evidence in court, I take it that you've been present in the courtroom setting from time to time on child abuse cases, being called as a witness, is that correct?
>
> A. Yes.
>
> Q. Have you found that therefore drawing from what you've said, that there is sometimes little or no weight put on the social worker's opinion in the courtroom? The judge relies entirely upon the expert evidence of the physicians as to abuse?
>
> A. I think very often judges rely more on the physical evidence of abuse and less on the pathology detected by the social workers in the home and the implications of that pathology. It's for that reason that I feel that we need to have expert witnesses in the social work field to bring into the courtroom research and other data about the importance of the interview, the pathology detected. We know that if a parent has a certain background history, that it may be next to impossible to help them and that that child may be in jeopardy. May be in jeopardy not because of the injuries we see now but because that

child is a special child for certain reasons that the parent can't stand and I'm going to talk about that shortly."

In my view implementation of a programme to accredit social workers as professional persons, including, in appropriate instances, certification as to special knowledge, skills and experience in relation to child abuse, will help to remove the problem as it is or is, by social workers, perceived to be.

My understanding of evidentiary matters is that, if there is in fact any difficulty in introducing opinion evidence of social workers, that difficulty is based on the inability of the party seeking to lead the evidence to satisfy the judge as to the qualification of the witness to give that evidence.

I would think that, once social work is recognized as a profession and once qualifications for membership in that profession and entitlement to use the designation "social worker" are established and enforced, any such difficulty would be removed by establishing that the witness is a member of the profession with appropriate experience and qualification.

The appearance of solicitors on behalf of children's aid societies should tend also to overcome some of the difficulties that the so-called court workers on behalf of children's aid societies have encountered in relation to evidentiary matters.

The next recommendation supplements the recommendation that social work be granted recognition as a profession and that use of the designation "social worker" be restricted so that it may be used only by those persons who have qualified to practice that profession.

73. *I RECOMMEND THAT within the profession of social work there be a category of social worker who shall be required to satisfy appropriate requirements of knowledge, training and experience and thus to be entitled to a*

further designation to denote his or her qualifications as a specialist in the field of child abuse. The requirements of qualification entitling anyone to such designation shall be established by the regulatory body of the profession.

RECOMMENDATION #74

My next recommendation is intended to assist counsel for children's aid societies and Crown attorneys in presenting evidence upon proceedings under the Child Welfare Act.

74. *I RECOMMEND THAT consideration be given to an amendment of the Child Welfare Act or the Evidence Act to provide that the opinions expressed by social workers formed by them in relation to child welfare matters shall be admissible as evidence upon proceedings under the Child Welfare Act and shall be accorded weight in the same way as the professional opinions of other professional persons are found to be admissible and are weighed.*

RECOMMENDATION #75

A related difficulty mentioned by Dr. Bates related to the use of photographs of abused children as evidence in court proceedings related to those children.

After the testimony set forth in relation to a preceding recommendation Dr. Bates said:

> "A. Just one other thing about court also that I have found troublesome and it is the view that is frequently held that colour photographs are inflammatory. That black and white photos can be admitted and even having those admitted is somewhat difficult but to have a colour slide as I'm later going to show you a colour slide, admitted into evidence is a hurdle that is almost impossible to overcome yet that is how the child appears. That's the reality of the situation and it is not inflammatory as far as I am concerned. It's a reality. It's what's after the child but I think that our judicial system needs to look more closely at that issue."

My understanding of evidentiary matters is that photographs, either coloured or black and white, are admissible as evidence provided the photographer is able to satisfy the court as to his or her knowledge and competence as a photographer and provided further that there is testimony to satisfy the court that the photographs do show "the reality of the situation," to use Dr. Bates' terms, and do not distort colours, dimensions or anything else.

The advocacy skills of solicitors appearing on behalf of the children's aid societies should assist in overcoming problems that might heretofore have been insurmountable for court workers.

Hearings and trials under The Child Welfare Act are conducted in a court composed of a judge alone. The problem of "inflammatory" testimony is not nearly so great as it might be in a court composed of a judge and a jury.

75. *I RECOMMEND THAT consideration be given to an amendment of the Child Welfare Act or the Evidence Act to facilitate the use of photographs, either coloured or black and white, of abused children in the provincial courts (family division). Such an amendment should provide that such photographs shall be admissible in evidence upon the proceedings unless the party opposing their admission satisfies the judge that they should not be admitted.*

RECOMMENDATION #76 and #77

In the Report and so far in these recommendations I have mentioned two matters involving what witnesses upon the Inquiry perceived to be problems in relation to the admissibility of testimony and its use by the courts. Those areas related to the opinions of social workers and to coloured photographs. I think there is a third area which might in some instances lead to problems similar to those mentioned in testimony.

In an indirect sense the possibility of the problem was raised upon the Inquiry. Claiming that the introduction of some testimony by Annals Popen would remove the solicitor-client privilege enjoyed by her and Annals Popen, Jennifer Popen succeeded in preventing Annals Popen from testifying about certain matters. I have stated my belief that such privilege should exist and my following comment and recommendations are not intended to diminish that privilege.

However, apart from that complication of the existence of such privilege, there is the more fundamental question as to whether in any case of abuse of a child a man or woman is competent or compellable as a witness for or against his or her spouse in proceedings under the Child Welfare Act. Such proceedings may be quasi-criminal in nature, as in the instance of a charge under section 40 of The Child Welfare Act, or they may be in the nature of a civil proceeding, as in the instance of an application by a children's aid society in respect of a child.

As I understand the present state of the law, a spouse is a competent and compellable witness for the prosecution without the consent of the accused or for the defence if the other spouse is charged with an offence under the Criminal Code in respect of violence allegedly inflicted by the accused upon one of the children of the spouses. I believe that in such a trial the spouse-witness is competent and compellable to testify as to communications between the spouses during their marriage. That opinion is based upon recent judicial interpretations of the specific provisions of the Canada Evidence Act.

However, so far as I am aware, those interpretations have not been challenged in or affirmed by the Court of Appeal of Ontario or the Supreme Court of Canada.

The provisions of the Evidence Act of Ontario are not the same as those of the Canada Evidence Act. Section 8 of the Evidence Act of Ontario provides that in proceedings authorized or permitted to be tried or heard before a court under the law of Ontario, which include proceedings of the sort under the Child Welfare Act, the husbands and wives of the parties to the proceedings are, "except as hereinafter otherwise provided, competent and compellable to give evidence on behalf of any of the parties." Section 11, however, provides that a spouse is not compellable to disclose any communication between the spouses during the marriage. That is a comprehensive provision.

Section 25 of The Child Welfare Act provided that upon any application respecting a child apparently in need of protection, the judge hearing the application has the power to summon any person and require him or her to testify, the judge having "the same power to enforce the attendance of witnesses and compel them to give evidence and produce documents and things as is vested in any court in civil cases." A similar provision is found in section 28 of the Child Welfare Act.

Judge Nighswander apparently invoked that provision when he called Jennifer Popen to testify upon the Society's application for custody of Kim. There was no corresponding provision in The Child Welfare Act enabling the judge to compel a person to attend and testify upon the trial of a charge under section 40 of The Child Welfare Act. Nor is there in the present legislation.

I am aware of the provisions of subsection 3 of section 40 which enables the judge conducting the trial of a charge under section 40 to "hold a hearing in respect of any child concerned and [to] proceed as though the child had been brought before him as a child apparently in need of protection." Section 47 of the present legislation contains similar provisions. I doubt that any testimony adduced while the judge was "hold[ing that] hearing in respect of [the] child" and "proceed[ing]" in that manner would necessarily be admissible or of use upon the determination of the guilt or innocence of the accused upon the charge under section 40.

The testimony upon the Inquiry was to the effect that most instances of abuse occur in private without witnesses. It would seem that some of the abuse inflicted upon Kim by Jennifer Popen occurred during Annals Popen's absence from the house. It may therefore be important in any proceeding under The Child Welfare Act that a spouse be compellable to disclose any communication between the spouses during the marriage if such communication relates in any way to abuse of a child of the marriage or of either spouse.

For example, during the absence of the father a child suffers an injury which may very well appear to have been suffered accidentally, and the mother, who was with the child at the time of the injury, gives a plausible explanation to the medical personnel who accept it as being true. However, on the return of the father, the mother tells him that the injury was caused by her deliberately striking the child. In reaction to that disclosure the father complains to the children's aid society and the police who commence some proceeding under The Child Welfare Act. On reflection the father decides he does not wish to testify about the conversation with his wife. It may very well be held that he cannot be compelled to testify about it and that may result in the failure of the proceedings begun by the children's aid society and police. The child would remain at risk.

As well the testimony upon the Inquiry was to the effect that very young children, that is under three years of age, were most likely to be abused. Kim was such a child. Such children are unable to testify.

Even if an older child were abused, he or she might not be able to testify under oath. Section 586 of the Criminal Code provides that

> "No person shall be convicted of an offence upon the unsworn evidence of a child unless the evidence of the child is corroborated

in a material particular by evidence that implicates the accused."

It may very well be that there is no testimony, apart from the testimony of the spouse of the accused, which is capable of being corroboration of the child's testimony.

While the judicial interpretation of the Canada Evidence Act I mentioned earlier would be sufficient to compel the spouse of the accused to testify if the abused child were a child of the spouses, I am not satisfied that the application of those interpretations would extend to a case involving a child of a former marriage of one of them or a child in respect of whom they were in loco parentis.

Thus, even in a case of child abuse where a prosecution alleges an offence against the Criminal Code there may be some evidentiary problems preventing a man or woman from testifying against his or her spouse or enabling him or her to refuse to testify against his or her spouse.

In any proceeding under the Child Welfare Act arising from such circumstances the spouse of the accused could not be compelled to testify as to communications between the spouses during their marriage.

76. *I THEREFORE RECOMMEND THAT the Ministry, through appropriate channels of government, seek to ensure the amendment of the Child Welfare Act and the Evidence Act of Ontario so as to provide that in any proceedings under the Child Welfare Act arising out of an allegation that a child has been abused or is apparently in need of protection a man or woman is a competent and compellable witness for the prosecution or applicant, as the case may be, or for his or her spouse who is the accused or respondent, as the case may be, if the child named in the proceedings is the child*

of the spouses or either of them or if the spouses are or either of them is in loco parentis to the child.

RECOMMENDATION #77

77. *I FURTHER RECOMMEND THAT the Ministry, through appropriate channels of government, request that consideration be given to an amendment of the Canada Evidence Act to like effect.*

RECOMMENDATION #78

I have made recommendations with reference to certain evidentiary matters in proceedings under the Child Welfare Act.

This recommendation is generally related thereto.

There was an expression of opinion to the effect that if a child were removed from a home because of abuse by a parent and were found, as a result thereof, to be a child in need of protection, the child should never be returned to that home.

I regard that as an extreme view which would deny much of the testimony of the beneficial results that might flow from proper application of knowledge and skill to assist families and children.

However I am prepared to accept that one incident of abuse in a home, proven to the satisfaction of a court, should have some bearing upon the manner in which that home is viewed by the children's aid society and the courts after such proof.

I have made recommendations as to the care to be taken in considering the return of the child to the home and in supervising the child's care after any return.

I want now to consider how the matter might proceed if, after return of the child to the home, there is a situation in the home which the children's aid society regards as sufficient to justify fresh proceedings to declare the child once again to be a child in need of protection.

The recommendation I am about to make may, in a sense, be not far removed from what Judge Nighswander had in mind when, in February, 1976, in placing Kim in the care and custody of the Society, he said:

> "...I am definitely going to note that he [Annals Popen] must give evidence that he has done something [about his alcohol problem] and that it is succeeding, before

the Court will permit the child to return to its parents..."

Judge Nighswander was placing an onus upon Annals Popen.

In my view that type of onus should continue to apply after the child's return. The parent should be expected to be able, if called upon to do so, to prove to the satisfaction of the court that the child in the home is not in need of protection.

In my view if, at any time after a child's return to the home, a condition exists in the home which causes the children's aid society to fear for the safety of the child in the home and to apply to the court for an order declaring the child to be in need of protection, the proof of the earlier finding that the child was a child in need of protection shall be prima facie proof of the child's need for protection.

Because of the testimony upon the Inquiry that one child of a family may be abused while other children of the family are not abused, I do not think it appropriate to extend the recommendation so as to apply it to proceedings in respect of any other child of the family.

However in the event of such proceedings being instituted in respect of another child of the family, proof of the earlier finding that a child of the family was a child in need of protection should be admissible upon the current proceedings to be given such weight as the judge hearing the matter decides.

The recommendation relates to proceedings under the Child Welfare Act. The Ministry might care to initiate discussions with the appropriate authorities for amendment of the Criminal Code and the Evidence Act of Canada to have a similar provision apply in relation to criminal proceedings alleging assault upon or the killing of a child.

In the absence of testimony directly upon the point, but upon the testimony that most abuse of children occurs while they are very young I am proposing that either aspect should apply in proceedings commenced ten years or more after the original finding of the parent's guilt or the child's need for protection.

78. *I THEREFORE RECOMMEND THAT the Ministry through appropriate channels of government seek amendment of the Child Welfare Act so as to provide that,*

1. if, within ten years after a child has been found to be a child in need of protection, fresh proceedings are instituted to determine whether the child is in need of protection, proof of the earlier finding shall be prima facie proof in the fresh proceedings that the child is in need of protection; and

2. if, within ten years after a child has been found to be a child in need of protection, proceedings are instituted to determine whether another child of the same family is in need of protection, evidence of the earlier finding shall be admissible as evidence upon the new proceedings to be given such weight as the judge hearing the matter may determine.

RECOMMENDATION #79

There was considerable testimony relating to the composition and function of the Board of Directors of the Society and the boards of directors of children's aid societies generally. A number of recommendations flow from that testimony.

The weight of the testimony was that members of the Board of Directors of the Society were, for the most part, uncertain as to their powers, rights, duties and obligations as individual members of the Board of Directors or as a body. There was little in the form of organized instruction of persons newly appointed to the Board of Directors. Some literature, such as The Child Welfare Act and "A Working Manual for Board Members of Children's Aid Societies" prepared by the Ontario Association of Children's Aid Societies in 1975, was available, but nothing was done to ensure that anyone read or understood any of it. It seemed that each new member of the Board of Directors learned "on the job" as it were, by observation and without specific instruction.

There was no testimony to suggest that this condition in the Society was in any way atypical.

Mr. McPhedran, who had served on the board of directors of another children's aid society before moving to the County of Lambton, expressed the gist of that testimony when, after noting that Mrs. Harvey and Mrs. Wood had testified to such effect, said:

> "...I feel [there] must be a standardization on a basic orientation process for all new board members, probably through a legislative amendment, so that when people are interested in volunteering their services to a children's aid society board of directors, then they in effect know, once they've been approached, or possibly asked to run or stood for election, what is going to be involved, because I think most people come on with all the best intentions in the world and really they're just not aware of what they might have to get involved with."

Mr. Zwerver expanded upon that somewhat when he said:

> "...an orientation manual along with appropriate audio visual material should be prepared for board members by the Association of Children's Aid Societies, in order that new board members understand the services, the functions and the legal requirements of the society and the responsibilities of board members within a corporation..."

In support of any course such as I describe in the next recommendation the society should ensure that each aspirant for election or appointment to its board of directors receives, in form suitable for ongoing use and amendment from time to time, a document setting forth in clear language a summary of the subject matter of the course. The manual prepared by the Ontario Association of Children's Aid Societies in 1975, properly up-dated, might usefully serve that purpose.

79. *I RECOMMEND THAT all aspirants for appointment or election to the board of directors of a children's aid society be required to attend and participate in an orientation course conducted by the society wherein they will be informed and instructed as to the objects, purposes and duties of the society and the function, duties, powers and obligations of the members of the board of directors as a board, as members of the committees of the board, as individuals and as officers of the corporation. Such course is to be developed and presented by the personnel of the society so as to incorporate or reflect local conditions, but should contain elements that are common across the province. Each course, while distinctive, should be based upon material which* *should be prepared and distributed by the Ministry or the Ontario Association of Children's Aid Societies.*

RECOMMENDATION #80

In the main body of the Report I have commented upon what I perceived to be the failure of the Ministry to fulfill its statutory duties to and in respect of children's aid societies. One aspect of that failure was the lack of supervision of the activities of the societies and the lack of communication by the personnel of the Ministry with the boards of directors of the societies as opposed to the local director.

That lack of communication was such that in some instances when personnel of the Ministry expressed criticism of the operation of a children's aid society it was expressed only to the local director of that society. The local director was then to decide whether or not to inform the board of directors of the criticism.

Mr. Allen testified upon this from his perspective as President of the Society. He was asked if, on the basis of the experience in Kim's case, he thought the Ministry should supervise the local children's aid society in its efforts to deal with such a case. His replies to that question and an associated question were recorded as follows:

> "A. Well I think so. I believe that another role is needed here and that is an auditing function. It's difficult to say what's going to happen in the future but I'm sure we're going to have more and more cases and our procedures have to be monitored. The processes involved in making decisions, how they're done, the record keeping practices, all of these procedures are going to have to be attended to carefully and so I could see a role here increasing perhaps to audit on a random basis if nothing else to ensure that appropriate practices by an agency are being followed and then a report, if such was the case, at least on an annual basis; if a report was then made available to the board of directors and perhaps a consultation if there were areas of disagreement or concern: that process could indeed obligate the boards to pay closer

> attention possibly to what it is they are administering and if there are any difficulties or concerns or shortfalls then the local people then might have the impetus or motivation to do something about it. I think, much as any agency that relies on a consumer service, there has to be some safeguard I would think from the central government.
>
> Q. OK. Now, tied in then with this auditing process I take it that the Board has not had any such information available to it at the present time as you are suggesting for our term.
>
> A. Not in the written form, no, and no, it's much less formal now. We have visitations from field consultants and I think we feel fairly confident with these people and they interact certainly with the staff, and I've come to recognize their skills and their judgments, but there is not that much that I'm aware of that's conveyed in written form and especially with respect to performance."

I gained the impression from the tenor of some of the testimony that there was a degree of what might be called "professional courtesy" extended by personnel of the Ministry to local directors of children's aid societies. That was comprised of exercise of discretion to choose not to inform the board of directors of what were regarded as relatively minor negative comments addressed to the local director. In that exercise of discretion the Ministry's personnel trusted the local director to correct the problem or to advise the board of directors, as he or she saw fit.

I am confident that any such exercise of discretion was well-motivated. However one is left to wonder as to the limits, if any, upon such discretion and the criteria to be used by the personnel of the Ministry when considering whether or not an exercise of such discretion was appropriate. Having heard the testimony upon the Inquiry and learning the serious results that can flow from errors of judgement in the field of child care as in many other fields, it would seem to me to be preferable that the Ministry's staff be permitted no such latitude of discretion. The board of directors of the local children's aid society should know what comments are expressed or what observations are made in respect of the society and its personnel by the personnel of the Ministry.

The board of directors is responsible for and to the Society. It is the board which should decide any question of discretion.

The testimony upon the Inquiry was to the effect that the Ministry, commencing in 1978, would undertake complete operating reviews of every children's aid society at intervals of about five years. I have commented upon that earlier in these recommendations. Mr. Allen in his testimony contemplated annual reviews. His reference to such reviews being "on a random basis" seemed to relate to the subject matter of the annual review.

This is another area in which the Minister, commencing in 1983, might wish to satisfy himself as to the Ministry's achievement of that aim to review each society quinquennially.

It should be noted that the present Child Welfare Act, in paragraph (b) of subsection 2 of section 2 imposes on the Director a duty to "inspect or direct and supervise the inspection of the operation and records of societies." That is, for all practical purposes a re-enactment of paragraph (b) of subsection 2 of section 2 of The Child Welfare Act in force during Kim's lifetime. It contains no direction as to how such inspection or supervision shall be carried out.

The Ministry should acknowledge that its duty to inspect includes a duty to report thereon to the board of directors of the society so inspected. If the Ministry does not so acknowledge, the legislation should be amended to force the Ministry to make such a report.

80. *I RECOMMEND THAT upon any review of the operations of a children's aid society by personnel from the Ministry, the Ministry shall* *promptly furnish to the board of directors of that society a written report upon that review setting forth the date or dates thereof, the purposes thereof, the observations thereon, comment, assessment and evaluation in respect of the observations, and the recommendations, if any, of those who conducted the review and their superiors. If either the board of directors or the Ministry feel it necessary or desirable appropriate personnel from the Ministry shall meet with the board of directors of the children's aid society to discuss the contents of the written report and the implementation of any recommendation. If any such report contains any negative criticism of the operation of the children's aid society the Ministry shall ensure that the matter is reviewed again after the children's aid society has had appropriate time to correct any deficiency or error in its procedures or operations.*

RECOMMENDATION #81

One area of concern expressed by many of the witnesses related to the inability of the board of directors of a children's aid society to evaluate the knowledge and skills of its supervisory or management personnel and the performance of duties by such personnel.

Implementation of the recommendation that social work be granted recognition and status as a profession with all that that should entail in the way of regulation and discipline of the profession should help in removing the difficulty.

Similarly implementation of the recommendation that a system for the accreditation of children's aid societies be developed should be helpful.

In the event any children's aid society were to have concern as to the qualifications of or the performance of duties by any management or supervisory employee it would be able to request assistance to that end from the governing body of the profession or from those responsible for administration of the accreditation process.

Even without either of those avenues the board of directors of a children's aid society should be able to seek assistance from qualified persons. One reservoir of appropriate personnel to provide that assistance should be the Ministry. Another resource group to whom a children's aid society might look for assistance is the Ontario Association of Children's Aid Societies.

For what it is worth, I note that in 1978 the Society chose to look to the Association rather than to the Ministry for help in relation to Kim's case. I regard that as a mute but sad commentary upon the Society's view of what the Ministry might have done to help.

81. *I RECOMMEND THAT the Ministry should ensure that there is a facility readily available to assist and advise the boards of directors of children's aid* *societies in relation to the qualifications of and performance of duties by management and supervisory personnel of the societies. Pending progress toward the recognition of social work as a profession with a governing and regulating body which may provide such a service and pending any system of accreditation of children's aid societies which may provide such a service, the Ministry should provide it or arrange with the Ontario Association of Children's Aid Societies to provide it. The existence of such a service should be made known to the boards of directors of each children's aid society at appropriate times, perhaps annually shortly after the annual meeting of the society. Such a service should extend to and be devised to deal with any complaint made by a member of the public in respect of the society or any of its supervising personnel.*

RECOMMENDATION #82

From impressions I formed during the Inquiry it is my belief that children's aid societies might benefit from the adoption of a policy of appointing and employing local directors and supervisory personnel for fixed terms, initially at least, of relatively short duration.

Mr. Lovatt was a long-term employee of the Society who was appointed Local Director and from then on, so far as the testimony indicated, no real consideration was given by anyone to the manner in which he fulfilled the duties of that office. Certainly there was no recorded assessment or evaluation of his ability to continue to perform those duties after Mr. Charko's report to the Minister which led to the Minister's approval of Mr. Lovatt's appointment. Even the contents of that report were not revealed to the Society.

Much the same applied to Mrs. Harvey and her tenure as a supervisor.

It would seem to me to be desirable that at pre-determined intervals the performance and ability of local directors and supervisors of children's aid societies should be reviewed for the clear purpose of determining whether or not contracts of employment might be extended.

I would regard this as an adjunct to any review of performance during employment and any assessment to determine whether or not the incumbent has maintained a currently acceptable standard of qualification.

Such a procedure would allow for an orderly procedure to terminate or extend employment. It would allow the orderly introduction of fresh ideas into an organization that might be growing smug, self-satisfied and stagnant.

In the testimony there were suggestions that some of the problems within the Society revealed by the Inquiry and other investigations, such as by the Farina Committee, might have been "inherited" by Mr. Lovatt from earlier management. If so, the Society was stagnant. Mr. Lovatt had been Local

Director of the Society for about ten years before the Farina Committee was appointed. That should have been time enough to correct whatever problems he inherited.

In the testimony I heard of Mrs. Harvey's apparently impressive academic qualifications and her long experience. But I also heard of her statement that the Society could not benefit from attendance of any of its personnel at a seminar for court workers. That is a further indication of stagnation and reliance upon past records rather than current qualification. Every other children's aid society in Ontario, with one exception, felt it wise to be represented at the seminar.

From the testimony if appears that workers in children's aid societies are mobile and can and do move from society to society, or even from and to other social agencies, seeking experience, improvement and advancement in various ways. Term appointments to senior positions would not interfere with and indeed might encourage such mobility. Mobility permits the worker to gain varied experience and in turn permits the societies to learn, from the new employees, of practices, procedures and experiences elsewhere which might lead to improvement of former practices and procedures perhaps "inherited" and unchanged.

I heard no testimony as to any such policy of term appointments and mobility. From the variety of positions held by many of the more successful social work practitioners who testified it would seem there are no problems which are insurmountable. I had thought there might be problems in relation to retirement pensions, rights of seniority, vacations and other benefits of that nature.

If there be such problems implementation of the following recommendation may require the active involvement of the Ministry and perhaps even legislative enactment. Accordingly, lest there be such problems, I couch the next recommendation so as to involve the Ministry to attempt to achieve uniformity and, if need be, legislative authority for such implementation.

82. *I RECOMMEND THAT the children's aid societies, with the active encouragement and involvement of the Ministry and the Ontario Association of Children's Aid Societies, adopt and implement a policy of appointment and employment of local directors and supervisors for fixed terms with provisions for the extension of any term if the society and the appointee so agree during, say, the last year or six months of the fixed term.*

RECOMMENDATION #83

There was substantial testimony to the effect that the structure and operational function of the committees of the Board of Directors of the Society did not satisfy the requirements of The Child Welfare Act.

A portion of Mr. Zwerver's testimony was directed to that issue when he said:

> "A. Given the fact that a board of directors has the responsibility for the overall governing of the societies' operations, it's important then to look at the structure of the board and how it does operate. The Board of the Sarnia Children's Aid Society is twenty-seven strong. I was concerned in looking at and discussing the operation of the Board with the Board members, that it did not appear to have a well functioning committee structure and we've already heard reference made earlier in I believe Mr. Heath's presentations, about the position or the role of committees in the structure of the board of directors of children's aid societies. In a small society a board might, in fact, do most of its committee activities in what's called committee of the whole where the total board in fact, takes responsibility for certain committee functions. In a board of twenty-seven that's very difficult to do, to provide people with the level of information required to make them knowledgeable about service issues, to deal with policy issues that flow out of service concerns. My concern was that in fact, there was not in the first instance a functioning executive committee of the Board as prescribed by the Act and secondly, there did not appear to be a functioning services committee as well. I think it's important to just take a look at what the role of committees are within the context of a board of directors. Board committees, this is also spelled out in the handbook on page 15.

'Board committees are purely advisory ones unless specific authority has been delegated to a committee by the board of directors.'

And in the case of the Sarnia, Lambton Children's Aid Society, there are specific responsibilities delegated to the executive committee under their by-laws, but to no other committee, except for the nominating committee. But a committee's function is to bring the judgement and knowledge and interest of a group of interested members of the board to bear on one specific aspect of the society's operations and then to advise the staff in matters where staff have a decision making responsibility or to advise the board where the subject matter involves policy or is beyond the authority of the staff. The issue of the executive committee I felt was extremely important, apart from the fact that it's prescribed by the Act and the role of the executive committee is fairly clearly established. It appeared that a great deal of activity probably due to the membership of the Board, had to be dealt with by the total Board or by the President and sometimes, some other senior officers. There was not an ongoing meeting of the executive committee that could deal with major policy and service issues as they occurred or in preparation for board meetings and this could lead to long board meetings and agendas not necessarily being as well focussed as they could be. So I recommended that a functioning executive committee, that would meet on a regular basis, be established in order to facilitate the work of the Board and this was done. The other area related to the services committee. Again as outlined in the handbook for board members published by the Association, the services committee I believe is an essential part of the operation of a children's aid society, if a board is to be kept informed of the service demands and the service complexities of the agency and to assist the board and senior staff

> members in all matters related to the service problems of the agency. Again although there had been a services committee in operation in the Society for a number of years, my understanding and from looking at records, it had met infrequently, it's activities were not well focussed and the level of knowledge about the services of the agency among the general Board was not as good as I felt it could be and I recommended that an active services committee be established to assist the Board, to assist the executive and to assist the senior staff in examining the service policies of the Society and their implications...."

I note Mr. Zwerver's reference to some matters being dealt with by the Board of Directors as a whole or by individuals rather than by the appropriate committee "probably due to the membership of the Board." That seems to me to be similar to testimony of other witnesses as to the lack of interest among members of the Board. That then relates to problems which hopefully may in part at least be resolved by assuring that truly interested persons, aware of the purposes and functions of children's aid societies and of the duties and obligations of members of the board of directors of such a society, are chosen to form the board of directors of the society.

However members of the board of directors are volunteers. Their interest must be maintained. Long meetings with little direction or substance surely do not sustain interest. There was testimony to suggest that that was the case in the Society.

In my view one aspect of the supervision of children's aid societies by the Ministry is to ensure that the requirements of the Child Welfare Act are met. That certainly includes the creation of the committees required by the statute or by the Regulations made thereunder. But the Ministry should not be content to see that those committees exist on paper. The Ministry should ensure that they operate in a useful and practical way. The Ministry should also ensure that other committees which may be necessary to meet any particular need of the individual children's aid society are also created and functioning usefully to meet such need.

83. *I THEREFORE RECOMMEND THAT the Ministry institute a programme of ongoing review of the structure and means of functioning of the board of directors of each children's aid society. The review should extend to and include the structure and function of the committees of that board of directors and any other committees within the society in which members of the board of directors participate or which report directly to the board of directors. Such reviews should be conducted at appropriate intervals, perhaps in conjunction with other ministerial reviews or perhaps by random attendance of personnel from the Ministry at meetings of the board of directors. The purpose of such reviews should be to assist the board of directors to establish and maintain a useful and functional structure of itself and its committees and efficient and productive meetings of itself and its committees. Each review should be followed by a written report to the board of directors setting forth the observations made during such review and any appropriate recommendations or directions arising therefrom to ensure compliance with statutory or regulatory requirements and, hopefully, to ensure that the interest of members of the board of directors is maintained and their individual talents are best used for the benefit of the society and the children and families it serves.*

RECOMMENDATION #84

After his wide-ranging comment upon the need for co-operation which I have mentioned Mr. Charko became specific and expressed his opinion as follows:

> "...For this reason I think also there should be greater consultation on hiring, particularly local directors. Presently the Ministry might object to certain persons to be hired as a local director, but if that person has requirements, meets the requirements as spelled out under regulations of Child Welfare Act, at least thirty years of age, has MSW or equivalent, he might be hired as local director, but that individual might not necessarily work together with other Agencies because of his personality and so on and we might feel that individual is not willing to be accountable to the province in certain areas. That whole area, I feel there should be greater consultation..."

It would seem that Mr. Charko was addressing the situation that would arise if the children's aid society proposed to employ as local director someone who possessed qualifications which would enable the society to appoint that person as its local director without reference to the Minister and without the apporval of the Minister, but who, for whatever reason, was a person whose appointment as local director would be objectionable to the Minister.

The position of local director of a children's aid society is very important. It entails responsibility to the board of directors of the society for the administration and enforcement of the Child Welfare Act in the geographical area served by the society. The position entails powers granted to the incumbent by statute. In practice the board of directors will rely upon the local director, as its most senior employee, for guidance and advice in the operation of the society including its relationship with the Ministry and with other individuals, groups or organizations in the community. In practice too the Ministry will have considerable contact with the local director in technical and administrative areas including reports, financial statements and budget procedures.

It seems to me that, in the same way that I feel the Ministry should inform the local children's aid society of the full contents of any report leading to the Minister's approval of the appointment of a local director, a children's aid society, proposing to appoint as local director someone who possesses qualifications enabling appointment as local director without the Minister's approval, should nonetheless refer its proposal to the Ministry for comment, particularly as to the suitability of the proposed appointee and his or her ability to fulfill the responsibilities of the office.

That is simply a precaution. If the person proposed as the local director is not presently an employee of the society a reference of the matter to the Ministry may provide some further information which should be considered in connection with the appointment. Such a referral would be useful even if the position is to be filled by the appointment of someone presently on the society's staff. There was considerable testimony as to the inability of a board of directors to evaluate the qualifications of its local director and his or her performance of the duties of the position. I think the same general remarks might relate as well to the society's ability to evaluate the qualifications and experience of its own most senior personnel who might ordinarily most likely be considered for promotion to the position of local director.

Bearing in mind the importance of the position and that, as was said in testimony, the very lives of children depend upon children's aid societies, it is my view that it is imperative that each board of directors receive as much information as possible about any person whom it proposes to appoint as its local director.

If the Ministry has fulfilled its statutory obligation to advise, supervise and inspect the children's aid societies its personnel will probably be in an excellent position to comment upon the qualifications, skills, abilities and general reputation of each local director of a children's aid society in Ontario. Possibly too the Ministry's personnel will have had considerable opportunity to form a basis for such comment upon the supervisory staff and even some of the subordinate social workers of each society.

I believe strongly in the independence and autonomy of the local children's aid societies and their boards of directors. They should remain free to accept and act upon or to reject and not act upon any comment or response by the Ministry in respect of any person. But they should ask for and receive such comment from the Ministry. The responsibility is theirs. They must then make a decision.

The position of the local director of a children's aid society is so important in the society and the society's responsibility for the lives of children is so great, that the Ministry and its personnel must respond fully and freely to each children's aid society upon any proposed appointment. Fear of civil litigation arising from frank comment must be removed.

84. *I THEREFORE RECOMMEND THAT when a children's aid society is considering the appointment of a local director it must, in addition to any other inquiries or investigations it may care to make, request comment from the Ministry upon the professional qualifications, job experience and general reputation of each applicant or person who is being considered for appointment. There should be a corresponding obligation upon the Ministry to respond in writing to each such reference in absolute frankness and with immunity from any liability, civil or criminal, providing the response is made without malice. That may require amendment of the Child Welfare Act. The response from the Ministry would then be one of the factors to be considered by the board of directors of the Society in its deliberations.*

RECOMMENDATION #85

In my view the responsibilities of supervisors of social workers employed by children's aid societies approach those of the local directors of the societies. The boards of directors of the societies considering the appointment of such supervisors are faced with problems similar to those they meet in considering the appointment of local directors. The following recommendation is an elaboration or enlargement of the immediately preceding one.

85. I RECOMMEND THAT, when a children's aid society is considering the appointment of supervisors of its social workers, it must request comment by the Ministry in respect of each person being considered for such an appointment. Such comment should be upon the suitability and ability of each person proposed for such appointment. The Ministry should be obliged to respond frankly and fully in writing with immunity from liability of any sort in the absence of malice. Any response by the Ministry should be but one factor in the deliberations of the board of directors of the society.

RECOMMENDATION #86

I take it as being implicit in what I have written that the board of directors of each children's aid society should fully investigate and inquire about the abilities of persons it proposes to appoint to its more senior staff positions. If my recommendation as to recognition of social work as a profession is implemented and if a regulatory body for that profession is created, that regulatory body should be consulted about and be able to comment, with corresponding immunity, upon any person considered for such appointment to a senior social work position in any society. It is on that basis that I make the next recommendation.

In the absence of any such governing body of the profession it would seem reasonable for each children's aid society considering any such appointment to seek comment from others, such as the Ontario Association of Children's Aid Societies and past employers. I am not prepared to recommend that any such other be compelled to respond or be granted any special or extraordinary immunity from liability if he, she or it does respond.

86. *I RECOMMEND THAT, if social work is granted legislative recognition as a profession and if the legislation establishes a governing body to govern or regulate the practice of that profession, children's aid societies proposing to appoint anyone to the position of local director or supervisor of social workers must, in writing, inform that governing body of each such proposal, with the name of each person being considered for such appointment. The governing body should be free to comment upon the suitability of the person proposed and his or her ability to perform the duties of the office. Provided the comment is given without malice the governing body should be immune from any liability which anyone might* *seek to impose upon it for its having made the comment. The governing body's comment shall be a factor to be considered by the board of directors of the society in its deliberations upon the appointment.*

RECOMMENDATION #87

In other areas of the Report I have set forth portions of the testimony and my comments upon the Central Registry for Child Abuse maintained by the Child Welfare Branch of the Ministry until 1978. I found it to be a useless facade without legislative sanction.

Dr. Bates perhaps expressed the general opinion of that Registry when he said:

> "If there is broad spectrum of abuse and neglect in our community, why is it that we don't see more cases reported to the central registry. Now this registry was set up in the mid sixties and is located at Queen's Park, receives reports from the Children's Aid Societies and from those reports, we get these statistics and in 1977, it was I think 1045 cases reported to the registry. A great lump from 1976 and undoubtedly related to death in our province from child abuse that year and publicity in the media. But we shouldn't have to have deaths to improve reporting.
>
> It's interesting that some children's aid societies do not fill out reports as adequately or as quickly as they should and therefore the total statistics are lower than what they should be in reality. I've been told by some workers that they've so much paperwork to do that they don't get the reports filled out so the Ministry doesn't know exactly how many cases are in the province and the Ministry will look at these figures I'm sure to try to determine what amount of resources they need to funnel into our society."

That was really a condemnation of the Registry and, indirectly, of the Ministry who, Dr. Bates assumed, used the reports to the Registry as a basis for some of its purposes.

But the testimony upon the Inquiry as to the relationship of that Registry to Kim's case was in my view absolutely devastating to the entire concept of the Registry as a vehicle for any useful purpose. Not only was it useless to Kim, but it may even have been harmful to her in that anyone, not aware of what was happening at the Registry as revealed by the testimony upon the Inquiry, would have been justified in believing that anyone bearing the grandiose titles assigned to clerks by the Ministry had qualifications as a social worker far and beyond those of the clerk who managed the Registry and correspondence addressed to and from it. The Registry was a useless, perhaps harmful charade.

Despite reports to that Registry which, on the testimony upon the Inquiry, should have aroused concern in the minds of those responsible for the Registry if they were qualified, responsible and experienced social workers with expertise in child care and child abuse, the reports from the Society to the Registry merited only *pro forma* responses, if indeed any response at all was forthcoming.

Witnesses in the employ of the Ministry acknowledged that during Kim's lifetime the Registry was used mainly for statistical purposes. The validity of statistics derived therefrom was certainly questioned by Dr. Bates. I can recall no denial of his testimony by anyone and I choose to accept it as being sound.

The legislation enacted in 1978 gives legislative sanction to the Registry. There was no testimony as to the operation of the Registry under that legislation.

It would seem to me that the new legislation in some ways may be unduly cumbersome.

Section 52 of the new legislation requires each children's aid society to report to the Registry all information concerning the abuse of a child "after the information is verified in the manner determined by the Director [appointed by the Minister of Community and Social Services for the purposes of the legislation]." I am unable to find in the legislation or the Regulations made thereunder any words to assist me in understanding what may be necessary to "verify" information.

I can think of several bases that might be used to establish information as having been "verified." The highest standard would be proof beyond a reasonable doubt. That is the standard of proof generally required to establish guilt in criminal or quasi-criminal proceedings. Another standard is proof on a balance of probabilities. That is the standard of proof generally required to establish liability in civil proceedings.

I am left to wonder which, if either, of those standards is to be applied to establish verification of information. And by whom is the standard to be applied? Is it to be the local director of the children's aid society? Is it to be some one else in the employ of the children's aid society and, if so, who? I can readily imagine instances where the social worker or police officer directly responsible for the conduct of an investigation may have an opinion quite contrary to that of his or her superior.

I recall the confrontation between Mrs. Harvey and Mrs. Kirby, Mr. Carter and the two police officers in February, 1976. I recall the testimony upon the Inquiry that investigation of reports of child abuse requires special skills, including acceptance of the fact that a mother or a father or another friend or relative is capable of abusing a child and that children are indeed abused by parents, friends and relatives. And I recall Mr. Khattab's inability to believe that Jennifer Popen could abuse Kim.

Perhaps neither of the standards I have mentioned was contemplated as being applicable to "verify" the information. Perhaps all that was felt to be necessary was that the person supplying the information to the children's aid society had reasonable and probable cause to believe that the information was correct. Or perhaps all that would be necessary would be a suspicion by the investigative personnel of the children's aid society or police force that the child might have been abused. Or, accepting the weight of the testimony upon the Inquiry, particularly that of Dr. Bates, that persons possessing necessary skills and experience can accurately predict that a child not yet abused is a high risk child, one more likely than others to be abused, perhaps all that would be required would be the expression of such an opinion by such a skilled person.

In my view the Registry would be a much more useful instrument if its use could be incorporated into the programmes which should be undertaken by the Ministry and the children's aid societies to prevent abuse. It would be regrettable if a children's aid society aware of a situation in a family which indicates that a child of that family is a high risk child could not alert the Ministry and, through the Ministry, any other children's aid society which at any later time might have contact with the family.

In my view the Registry would be more useful if the provision of the 1978 legislation, section 49, which imposes upon professional persons and officials special duties to report instances of abuse were extended in two ways.

Presently the special duty to report relates only to "abuse that may have been caused or permitted by a person who has or has had charge of the child." That would seem to exempt from the special obligation to report abuse caused by a sibling or other relative of the child or any person living in the same residence as the child and thus constituting a source of possible further abuse to the child. I see no reason for the limitation of the present legislation.

I appreciate that a medical doctor with the skills and experience of Dr. Bates and the facilities available to him through a world famous hospital in a large metropolitan city might very well be able to conduct some investigation to determine that there are reasonable grounds to suspect that the abuse suffered by a child was caused or permitted by someone who had charge of the child.

But not all medical doctors have such skills and experience nor do they have ready access to such facilities. They may not be able to conduct an investigation thorough enough to enable them to conclude that there are reasonable grounds to suspect that the abuse of child was so caused.

Even Dr. Bates acknowledged the need for investigation of incidents or reports of abuse to be conducted by persons with special skills and training which medical doctors and social workers, for example, may not possess.

Under the present legislation a medical doctor, for example, is liable to a financial penalty for failure to report abuse of a child which he or she has reasonable grounds to suspect was caused or permitted by a parent of the child having legal custody of that child. But there is no financial penalty imposed upon the same medical doctor for failure to report abuse of the same child which the doctor knows, let alone suspects, was caused by another person in the same household, or by a relative or neighbour or by a paedophile in the community. It would seem that abuse caused in any such way is at least as worthy of report as abuse caused by a person having charge of the child.

I recognize that abuse by one having charge of the child, such as a day care worker, constitutes, in a sense, a breach of the trust of the child and perhaps of the parents. But the continuing risk to the child may be just as great even though the abusing person does not have charge of the child.

In my view subsection 2 of section 49 of the 1978 legislation should be amended by deleting the clause "that may have been caused or permitted by a person who has or has had charge of the child." If the official or professional person is to have a special duty to report abuse that duty should relate to all instances of abuse however caused. It may very well be that, while a medical doctor may identify a particular injury as having been caused by abuse, it is beyond the professional competence of the doctor to establish the identity of the abuser.

In my view subsection 2 of section 49 of the 1978 legislation should not be limited in its application, as it now is, to abuse. It should be amended to impose upon officials and professional persons the special duty to report the existence of conditions which lead the official or professional person to conclude that the child may be a high risk child, a child more likely than others to suffer abuse.

I would regard the latter revision of the legislation as a part of a programme to use facilities presently available to identify situations of possible danger and thus to seek to prevent the situation progressing from one of possible danger to one of actual abuse of the child.

There were a number of suggestions upon the Inquiry as to the enlargement of the scope of the operation of the Registry. Those suggestions were wide ranging. One was that the Registry should be structured so as to be able to receive information at all times from all sources, not only from children's aid societies which have "verified" information they have received. It was suggested that if police officers, public health nurses, personnel on duty in the emergency departments of hospital, social workers, teachers, relatives, neighbours, friends or strangers observe a situation which arouses concern or suspicion they should be encouraged and able immediately to report that situation to a central repository of such reports. It was suggested that while one isolated report of a minor and isolated event might not in itself appear to be important it might be important if, for example by use of modern computer technology, it could be related to one or more other reports and then appropriate action could be undertaken.

This is not unlike the expert testimony upon the Inquiry as to Kim's injuries. Some of the injuries, if viewed in isolation from all others, might not appear to have been caused by abuse or to be in any way extraordinary. But when all of Kim's injuries were viewed with full knowledge of all of them the inescapable conclusion was that Kim had been abused.

What happened to Kim is in keeping with the expert testimony upon the Inquiry that abuse of a child may be progressive. The first injury may be minor, succeeding injuries may be more serious and, ultimately, the final injury may cause death. That was the progression Dr. Singh feared in March, 1975 and which did come to its sad conclusion in August, 1976.

87. *I RECOMMEND THAT the Ministry proceed to seek revision of the*

1978 legislation in the following ways:

(a) by enlarging the scope of the operation of the Central Registry so as to permit it to receive and record at all times from all sources information and reports of child abuse or situations of children apparently in need of protection because of an unusual risk of abuse. The Registry should be equipped to record and store any such information or report and to collate it with any relevant information or report previously received, recorded and stored. The Registry should have personnel qualified to assess and evaluate all such information and reports and to take appropriate action in respect thereof. The appropriate action may be to decide that nothing need be done other than to receive the information. Or it may require the staff of the Registry to inform the local children's aid society and police force or other authorities immediately and then, in due time, to ensure that the local children's aid society has properly responded to the matter by investigation and report;

(b) by amending subsection 2 of section 49 thereof by deleting the clause "that may have been caused or permitted by a person who has or has had charge of the child;" and

(c) by amending subsection 2 of section 49 thereof by extending its scope so as to include an obligation to report any situation which, in the opinion of the official or professional person, indicates that a child is in an unusually high risk of being abused.

Chapter XXXIII

Collection of Recommendations

1. I RECOMMEND THAT all concerned with the protection, care and welfare of children approach their respective tasks and duties in a spirit of voluntary co-operation with one another and others so as to ensure the best possible service to children and families in each community.

2. I THEREFORE RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act so as to provide that "abuse" includes a condition of any impairment of a child whether it be medical, emotional, developmental, psychological, psychiatric, educational, social or other.

3. I RECOMMEND THAT the Ministry and children's aid societies devise, establish, maintain and operate continuing programmes and services to prevent or reduce the incidence of child abuse in Ontario. The Ministry should maintain an ongoing assessment of such programmes and services to ensure that they reflect the best of current professional opinion and practice. The Ministry should not act in isolation, but should secure the co-operation, assistance and advice of other Ministries of Government and of children's aid societies, professional associations, institutions and agencies such as police, hospitals, physicians, public health nurses, schools and social workers, and of knowledgeable and interested persons such as Dr. Bates and others who offered to serve the Ministry in the best interests of children. Local children's aid societies should build upon the Ministry's programmes to operate local programmes to the same end adapted to accommodate local conditions.

4. I RECOMMEND THAT the Ministry, clearly in writing and by its actions in considering the estimated expenditures of children's aid societies, affirm its support of programmes by children's aid societies intended to seek to prevent or reduce the number of incidents of child abuse or the risk thereof. It should be made clear that during consideration of any proposed expenditures submitted to the Ministry by a children's aid society for approval pursuant to the _Child Welfare Act_ proposed expenditures upon preventive programmes will be regarded as being of great importance.

5. I RECOMMEND THAT the Ministry and the children's aid societies devise, establish, maintain and operate continuing programme to inform the public generally of the presence of child abuse in Ontario and in our communities and to seek the assistance of members of the public in efforts to reduce or eliminate the incidence of abuse. Such programmes should emphasize that, even apart from statutory duty, we, as members of the public, owe it to our children and to ourselves to report our cares and concerns for the safety and well-being of our children and thus of our whole community.

6. I RECOMMEND THAT children's aid societies be encouraged to devise, develop, maintain and use programmes for the productive and fulfilling engagement of volunteers and supportive groups in the community in the various functions of the societies, including functions in relation to child abuse generally and in relation to specific instances of abuse. Teams of volunteers especially selected and trained may assist in child abuse matters. In the same way that social workers should not be required to work in the area of child abuse for lengthy periods of time, volunteers should serve on child abuse cases for relatively short periods of time although I recognize that in some instances the exigencies of a case may make it necessary or desirable for a volunteer to be involved in it for an unusual length of time. The Ministry should be prominent in such encouragement and should seek whatever amendment of legislation or regulations may be necessary to authorize and regulate the use of volunteers in any way, including those I have mentioned in the preamble to this recommendation.

7. I RECOMMEND THAT each children's aid society establish and maintain an ongoing programme to inform the public of the organization, function and activities of the society and of its need for continuing support from the community. That programme should seek to encourage members of the public to become members of the society and to participate in its affairs, perhaps as members of the board of directors, or as members of standing or special committees. The goal should be a broad base of community membership and support.

8. I THEREFORE RECOMMEND THAT the Ministry seek an amendment of the Child Welfare Act so as to remove therefrom the requirement that any municipal representative appointed to the board of directors of a children's aid society by a municipal council must be a member of that municipal council.

9. I RECOMMEND THAT the Ministry, through the appropriate processes and procedures of the Government of Ontario, seek to ensure that the curricula for the education and training of persons who wish to enter various professions and callings in the Province of Ontario which are governed or regulated in any way by any Ministry or branch of the Government of Ontario contain material upon child abuse sufficient to enable the candidates, when graduated or certified, to have degrees of knowledge, training and skill in relation to child abuse commensurate with their relative positions within their own professions and callings and in relation to other professions and callings. The training and education of candidates in each profession or calling should emphasize the need for the members of that profession or calling to co-operate with the members of other professions and callings in the entire range of activities in relation to child abuse. Those activities include the initial detection of the existence of abuse or the risk of its possible occurrence in the future, the subsequent investigation and then the management and treatment of the case in all of its aspects. The appropriate Judicial Council should be requested to include discussion of child abuse in the continuing programmes of seminars for judges, particularly those who sit in the provincial court (family division) and thus are most often most directly confronted with problems relating to child abuse. Such curricula should be the subject of on-going review to ensure that they remain current and reflect all developments in professional opinions, practices and procedure whether caused by legislation, regulation or judicial decision or resulting from experience with earlier opinions, practices and procedures.

10. I RECOMMEND THAT each person employed or practicing as a social worker or holding himself or herself out as a specialist in child abuse in any other profession or calling in the course of training for which there is a component related to child abuse, even though such component may have been added to the course of training since the graduation or certification of any such person, be required to maintain, by continuing courses and examinations upon the subject, an appropriate level of knowledge and skill in the light of current law, practice and procedure related to child abuse.

11. I THEREFORE RECOMMEND THAT the Ministry develop and operate an ongoing programme to inform members of the public generally and members of appropriate professions and practitioners of appropriate callings in particular of the statutory duty to report information of any incident or suspicion of abuse and of the importance of such reports to the children's aid societies.

12. I THEREFORE RECOMMEND THAT the Ministry seek the appropriate amendment of the Child Welfare Act so as to make it an offence for anyone having information about any incident of child abuse or suspected child abuse to fail to report such information to a children's aid society as required by the statute. Anyone found guilty of that offence should be liable to a fine not exceeding an amount to be prescribed in the legislation and which will be large enough to be a true deterrent to anyone who is considering remaining silent when in possession of information which, by reason of the legislation, he or she is required to report to a children's aid society. There was no testimony to enable me to suggest what such a penalty might be, but the present penalty of $1,000.00 for persons having professional and official duties appears to me to be rather modest.

13. I THEREFORE ENDORSE AND RECOMMEND the retention of the privilege of communications between solicitor and client so that a solicitor is not required to report any information about abuse given by a client who is party to any proceeding in which the particular incident of abuse is or may be a factor.

14. I THEREFORE RECOMMEND THAT the Ministry co-operate with the Ministry of Education, the Ministry of Colleges and Universities and any other appropriate agency, governmental or otherwise, responsible for the preparation of curricula in schools and other educational facilities, to ensure that such curricula include adequate provisions for instruction in the responsibilities of parenthood. Such instruction should be part of the general curricula and should be part of every pupil's personal course of study in elementary and secondary schools. Appropriately advanced instruction should be available to all students in post-secondary schools, colleges and universities. Such instruction should be available in adult education programmes. Such instruction should include elements relating to child abuse. With education and knowledge and with the confidence resulting therefrom the cycle of abuse may be broken. Children's aid societies and multi-disciplinary abuse teams in local communities should be encouraged to participate in the preparation and delivery of such programmes.

15. I RECOMMEND THAT the Ministry devise, prepare and distribute to children's aid societies and similar organizations serving families and children materials for training of personnel engaged or to be engaged in the detection, reporting, investigation and management of cases of child abuse and in the protection of children from abuse. Those materials should be subject to ongoing review and revision to ensure that they reflect current policies and procedures and any developments resulting from amendments of legislation or regulations or from judicial decisions. Those materials should be made available by the Ministry to other ministries or levels of government or agencies and institutions for the training of personnel who may be called upon by children's aid societies and similar organizations to assist in efforts to prevent and minimize child abuse and the results thereof. The local children's aid society should ensure that community child abuse teams and the professions, callings, institutions or organizations represented thereon have an opportunity to receive such training and information or the portions thereof relevant to their activities.

16. I THEREFORE RECOMMEND THAT the Ministry should encourage each children's aid society to establish an adequate and current library of books and audio-visual materials, with appropriate equipment, for the use of the social workers employed by the society. The Ministry should make it clear that reasonable sums of such purposes will be approved as part of the annual budget process.

17. I RECOMMEND THAT every report or instance of child abuse be investigated and managed and treated by a team or teams of qualified persons. The local children's aid society shall have the primary responsibility for the creation of the team or teams to deal with the various aspects of each case. In some aspects of the case the team may be comprised solely of employees of the children's aid society, but preferably it should have representation from such other organizations, professions, callings, agencies, institutions and authorities as may be necessary to provide protection and care to any child involved in the particular case.

18. **THEREFORE I RECOMMEND** that each local children's aid society seek to employ social workers who, by reason of their special skills and knowledge of the languages and customs of the countries of origin of persons or families resident in the community but who were not raised in Canada, are especially qualified to assist in or manage cases or reports of abuse involving such persons and families.

19. I RECOMMEND THAT the Ministry seek the active co-operation of other ministries of government responsible for the regulation of professions, callings, institutions and authorities the practice or function of which may in any way relate to child abuse so as to ensure the establishment and function of multi-disciplinary teams. Each children's aid society shall be responsible for the institution of proceedings necessary for the formation of such team or teams as may be required to serve its community or communities. Each such team shall develop its own practices and procedures recognizing the dominant responsibility of the children's aid society and the Ministry to protect and care for children. It should be made clear that, provided it is made for the purpose of the team's consideration of a particular case, disclosure of information by and among persons serving on such a team shall not be nor be deemed to be a breach of any confidence that might otherwise attach to such information.

20. I THEREFORE RECOMMEND THAT each children's aid society select from amongst its social workers an appropriate number of persons to form the society's child abuse team. The social workers so selected shall be qualified for such assignment by reason of personal aptitudes, knowledge, skill and experience especially required to deal with all phases of child abuse cases. One or more members of that team shall be readily available at all times to provide service to existing or new cases as required. That team shall be assigned to provide service to all cases of abuse for which the society is responsible. Primary responsibility for an individual case will be assigned to an individual member of the team after discussion of the case by the team. One member of the children's aid society's management or supervisory staff shall be assigned as the resource person to whom the worker primarily responsible and the associated team of the society's workers may look for support or advice in case an emergency arises when normally desirable conferences cannot be convened, and who also will attend such regular conferences in relation to the case. Active service upon the team shall be rotated among the society's properly qualified social workers. Members of the team should be assigned to other duties as well. Less qualified social workers shall receive in-service training with the team so as to attain proper qualification and appointment to the team in due course.

21. I RECOMMEND THAT upon receipt by a children's aid society of any report or information relating to abuse or suspected abuse of a child the children's aid society must forthwith commence and diligently complete a thorough and orderly investigation. Procedures for the conduct of any such investigation should be devised by each children's aid society in a manner to satisfy or exceed standards therefor prepared or to be prepared and maintained by the Ministry. Those procedures should entail a prompt recording, in permanent form, of

(1) the source, if known, and the contents of the report leading to the investigation;
(2) the preliminary results of the initial investigation;
(3) the assessment of those preliminary reports including such matters as the gravity of the case and the need for further investigation or other action;
(4) if further investigation or other action is required, the nature and purpose thereof; and
(5) the assessment of the complete investigation and its results.

Like all standards those standards must be the subject of on-going review and revision, if indicated.

22. I RECOMMEND THAT each children's aid society shall ensure that an appropriate number of its social workers, specially selected on the basis of aptitude, knowledge and skills, are specially trained to investigate reports and cases of child abuse and to report thereon promptly. Any such report shall contain the author's assessment or evaluation of each facet of the investigation together with recommendations as to what, if anything, might flow from the investigation and what further, if anything, might be necessary or desirable. Investigation of any report or case of child abuse should be entrusted only to such specially chosen and trained investigative social workers who may be assisted by other social workers who may be receiving in-service training in investigation of child abuse. The temporary absence of such specially trained investigative social workers should not delay the commencement of the investigation. It must begin at once with the most qualified social workers who are available and who should be relieved as quickly as possible. If its complement of social workers justifies or enables it to do so, each children's aid society should seek to ensure that the investigative social workers are not in direct contact with the family during the management and treatment of the case after finalization of any court proceedings arising from the investigation.

23. I RECOMMEND THAT in any instance of abuse or alleged abuse which, in the opinion of the child abuse team of the children's aid society, should be investigated by police officers the children's aid society should promptly inform the police force responsible for the provision of police services to the community and request its co-operation to conduct the investigation and, if deemed necessary, to gather particular information for the assistance of the children's aid society in its investigation, management and treatment of the case. The police must promptly assume conduct of the investigation and collection of information and must keep the children's aid society fully informed thereof. There should be a confidence between police officer and social worker to ensure a full exchange of information. This may require the Ministry to obtain the co-operation and support of the Ministry of the Solicitor General.

24. **I THEREFORE RECOMMEND THAT** if a local children's aid society lacks personnel qualified and skilled in the techniques of investigation of child abuse, or if the assignment of its personnel to investigation of an incident or report of abuse may diminish the society's ability to deal with other facets of the case, or if the nature of the case is such that it is necessary or desirable that the police be informed of it, the society should enlist the assistance of the local police force to conduct the investigative phase of the case. In such an instance the assistance should be given upon the pre-arranged understanding that, despite what may be revealed upon the investigation, criminal or quasi-criminal charges will not be laid if they might prevent or hinder the successful attainment of an overall satisfactory conclusion to the case in the best interests of the child, the family and the community.

25. I RECOMMEND THAT those assigned to investigate instances or reports of abuse be aware of the use to which the results of that investigation might be put. To that end those who conduct such investigations will require special training to make them aware of the various matters in respect of which they must seek information. In brief they should be trained to prepare a psycho-social history of the family.

26. I FURTHER RECOMMEND THAT in every incident in which abuse of a child has been caused or permitted by a member of that child's family the investigation into the abuse must be probing, broad and comprehensive. It must seek to obtain information to enable those who must make decisions as to the future care and well-being of that child to make correct and valid assessments or diagnoses of the various factors in the case and thus to make appropriate decisions.

27. I THEREFORE RECOMMEND THAT those responsible for the investigation of any report or incident of abuse be instructed specifically to make special inquiries and investigations to determine whether or not the child involved is, for any reason, one of any class or classes of children who may be high-risk children, children more likely than others to be abused. The investigators will require special training in this area, particularly in relation to the factors which are subjective in nature.

28. I THEREFORE RECOMMEND THAT those responsible for the investigation of any report or incident of abuse be instructed specifically to make special inquiries and investigations to determine whether or not one or both of the parents is or are inappropriate or inadequate in any way, whether physically, mentally, developmentally, emotionally or otherwise. This too is an area in which the investigators will require special training and instruction.

29. I THEREFORE RECOMMEND THAT in every instance of abuse or suspected abuse those who conduct the investigation, whether they be personnel of a children's aid society or police officers, should ensure that the child is examined by a medical doctor, preferably one with special training in paediatrics and abuse and preferably in a proper facility for such examination, such as the doctor's own examining room or in a hospital. The examination should not be limited to a physical examination, but should include such other tests or examinations as the examining doctor may deem necessary to ascertain the development of the child and any impairment which may have been suffered. The medical doctor should be requested to express an opinion as to the likelihood that any injury or condition discovered upon such examination resulted from abuse of the child. If possible the parent or parents of the child should be present or available to give, if he, she or they wish, any explanation or supposed explanation for the injury or condition. Failing attendance of the parent or parents the investigators should inform the doctor or other person conducting the examination of any explanation given for the presence of the injury or condition. The medical doctor or other consultant should be requested to express an opinion as to the validity of any explanation in relation to the injury or condition discovered upon the examination.

30. I THEREFORE RECOMMEND THAT the Regulations made under the Child Welfare Act be amended as follows:

1. to define the meaning of the expression "child in care" so as to make it clear that the expression includes a child from the moment of apprehension of the child by the society or from the moment of any voluntary delivery up of the child to the society or from the moment of any order or agreement committing or placing the child to or in the care and custody of the society, whichever comes first, until the expiration of any such apprehension, delivery, order or agreement and any extension thereof. It should be clear that the child remains in the care of the society if the child is residing physically or visiting the family home prior to such expiration;

2. to require the children's aid society to provide medical and dental examinations and treatment of an abused child as soon as practicable after the child comes into the society's care and thereafter not less frequently than annually while the child remains in the care of the society with the provision that if, while in care, the child is returned to the family home the society shall provide such examinations not less frequently than bi-weekly for at least three months after the child's return home and thereafter shall provide such examinations as often as the child abuse team and the medical and professional advisors of the society may advise in keeping with good practice of child welfare; and

3. to require the children's aid society to provide for such medical, emotional, developmental, psychological, educational, psychiatric and other assessment and treatment of an abused child in the care of the society and after the child's return home as the child abuse team and the medical and professional advisors of the society deem desirable or advisable in keeping with good practice of child welfare.

31. I RECOMMEND THAT the Ministry, through appropriate procedures, seek amendment of the Child Welfare Act so as to give a judge, hearing a matter thereunder in relation to a child who has been abused or found to be a child in need of protection, the specific authority to require the parents of that child or any person in loco parentis to that child or any person residing in the same home as such parents or person in loco parentis to the child to be examined physically and otherwise as the judge may direct for the purpose of determining whether the child might be at some unusual risk if left or returned to live in that home.

32. I THEREFORE RECOMMEND THAT the Ministry seek further amendment of section 29 of the Child Welfare Act so as to empower the court to make an order thereunder at any stage of an application to the court to determine whether the child is a child in need of protection.

33. I RECOMMEND THAT each children's aid society develop a procedure and practice whereby appropriate conferences of its personnel and others will be convened to consider all relevant factors and then to make decisions in respect of each case of child abuse. Decisions may relate to the assignment or transfer of responsibility for performance of duties or may relate to any stage or phase of the investigation, planning, management or treatment of the case. The requirement for such conferences should be clearly expressed in the society's manuals of practices and procedures. The Ministry should assist each children's aid society in this effort.

34. I RECOMMEND THAT each children's aid society in its manual of practices and procedures set forth the need for planning and completing the transfer of responsibilities for a case within the society. The manual should be clear and precise and set forth what is required and expected of each supervisor and worker involved in the transfer. It should stress the concern that service to and relationship with the particular family and every other family which might be affected by the transfer should be disrupted to the least extent possible. It should stress the need for the permanent records of the case to contain a resume of the reason for the transfer and what was done to effect it and how it was accomplished together with appropriate comment and assessment.

35. I RECOMMEND THAT each children's aid society develop and maintain an internal information system capable of enabling the administrative, supervisory and management personnel of the society to know at all times the status of every current case in the society. This is especially so in relation to serious matters requiring service by the society over an extended period of time.

36. **THUS I RECOMMEND THAT** each children's aid society ensure that its social workers are instructed in the art of preparing and recording reports for the files of the society and that those workers receive in-service training and instruction therein. Such instruction should emphasize that the recording should be more than mere administrative reporting of what was observed without any expression of opinion, judgement, assessment or evaluation thereof and expression of the perceived significance thereof to the overall plan for management of the case. The recording should contain reference not only to what has been observed, but also to what appears to be missing and what is desired or needed to enable the overall plan to be developed and implemented to successful conclusion. The policies and procedures developed or adopted by children's aid societies for the management and treatment of cases of abuse should require each worker having any contact or involvement with the case to record promptly the time and nature of such contact or involvement and his or her observations, if any, upon each such contact or involvement and to express an opinion as to the nature of the case upon the basis of those observations. Each children's aid society should develop and insist upon adherence to a system to ensure that a social worker's notes are prepared promptly, transcribed promptly and correctly, and then, in effect, confirmed, as corrected or revised if need be, promptly by the social worker and then acknowledged by the appropriate supervisor. The system for the preparation of recordings should form part of the manual of the practices and procedures of the society. The procedures of each children's aid society should ensure the original accuracy of all recordings and that they are not later altered or tampered with. The Ministry's supervision and inspection procedures should contain elements to that effect.

37. I THEREFORE RECOMMEND THAT, as part of any plan to return a child to his or her home after an incident of real or suspected abuse, the children's aid society should arrange for the complete medical examination of the child immediately prior to the date of the return and and for frequent complete medical examinations of the child after such return. The medical examinations should be conducted by a physician retained by the children's aid society. The first such examination after the return should be within two weeks of the return and subsequent examinations should be at intervals of not more than two weeks unless the child abuse team of the society, in conference with the examining physician, determines otherwise. All such examinations should be conducted in a hospital or in the office of the examining physician, in that physician's discretion having regard to the facilities required. The examining physician should be expressly authorized in his or her discretion to release information about the child's health to the physician who is the family doctor. Any such medical examination should include such tests as the examining physician may deem necessary to determine the child's development and any impairment thereof.

38. I RECOMMEND THAT the child abuse team of each children's aid society, as a part of its programme to manage and treat a child abuse case, establish and maintain an ongoing relationship with the physician who provides medical services to the child's family as the family's doctor. If the children's aid society engages another physician to provide medical services to the child it should instruct and authorize that physician to obtain the child's prior medical records from the family physician and other sources and, if the child is to be returned to the family home, to supply to the family physician the child's medical records for the period during which the child was in the care of the society. That exchange of information may lead to the family doctor's more easily recognizing situations of risk for or abuse to the child and thus to earlier and more beneficial report thereof to the children's aid society.

39. I RECOMMEND THAT the child abuse team of each children's aid society, as a part of its programme to manage and treat a child abuse case, maintain an ongoing relationship with those who, in any way, have assisted or may assist the children's aid society in relation to the case. Among such persons I would include anyone who had reported the case or the suspicion of abuse to the children's aid society or who willingly co-operated with the society in the provision of assistance or information. If for no reason other than common courtesy, they should be aware of the result of their reports or actions. More importantly they may be a means of preventing any recurrence of abuse, perhaps by keeping the society aware of any unusual circumstances or observation or perhaps merely as a result of the parents' knowing from testimony or otherwise that persons in the community are concerned about the welfare of the child. They are more eyes and ears of the society in the community.

40. I RECOMMEND THAT the Ministry, through appropriate channels of government, seek to obtain an amendment of the Child Welfare Act so as to provide that, in any instance where a child removed from the family home has been found to be a child in need of protection because of abuse or because of conditions in and about the family home which may constitute an unusual risk for the child and has been placed in the care and custody of a children's aid society, the child may not be returned to the family home prior to the expiration of the order placing the child in care of the children's aid society except by an order of a judge made on application and upon notice to such persons as the judge may direct. The judge should be empowered by the Child Welfare Act to impose such terms upon the return of the child as the judge deems necessary to protect the child.

41. I THEREFORE RECOMMEND THAT when a child who has been removed from the family home as a child in need of protection is returned to the family home the children's aid society should be especially vigilant and alert in its supervision of the child's care in the family home during the period immediately following the child's return. The children's aid society should be alert to the possible effect upon the child's care resulting from other events occurring at or about the time of the child's return. That period of especially close supervision should be not less than three months.

42. I RECOMMEND THAT if a children's aid society learns of the return or proposed return home of a child after lengthy absence from the home even for reasons not related to abuse, the society should ensure that every possible effort is made to assist and support the child's parents in the re-introduction of the child to the home. This would be a part of the society's programme of prevention of abuse.

43. I RECOMMEND THAT co-operation between public health nurses and social workers employed by local children's aid societies should be regulated by formal documents setting forth the need for and the basis of such co-operation. Children's aid societies should seek the active assistance of public health nurses as a means of observing conditions in any home in which a child, about which a children's aid society is concerned in any way, resides. Public health nurses must inform local children's aid societies of any circumstance which causes them to have any fear that a child might be in some danger of abuse even though there be no physical evidence of abuse. Public health nurses must assist local children's aid societies when requested and, by appropriate legislation, should be specifically authorized in the performance of their general duties in or about the home or family of any child to physically examine the child if the children's aid society has expressed any suspicion or concern that the child may be in any danger of abuse.

44. **I THEREFORE RECOMMEND THAT** the Ministry seek appropriate amendment of the Child Welfare Act to authorize or empower a judge, upon an application under that statute, to order and direct that public health nurses be given free access to any child named in such application for the purpose of examining such child as one means of ascertaining whether or not the child has been abused and/or as a means of preventing abuse to the child and supervising the care of the child.

45. I RECOMMEND THAT each children's aid society make arrangements to have legal services available to its personnel engaged in child abuse matters. If reasonably possible those services should be available at all times to meet emergency situations in such cases. The social workers of each children's aid society must be made aware of those arrangements and encouraged to avail themselves thereof in every instance. Procedures governing the handling of cases or reports of abuse should provide that, except in cases of emergency where full conferences are not practical, decisions to use or not to use such legal services should be made at conferences of the appropriate team or teams of workers and duly recorded as part of the permanent record of each case. If any court proceedings arise as a result of any instance of abuse the children's aid society must be represented by a solicitor even if the proceedings are unopposed.

46. I THEREFORE RECOMMEND THAT the Ministry establish and maintain a system whereby local children's aid societies shall have immediate access at all times, twenty-four hours a day, to advice and assistance from social workers skilled and qualified in all aspects of child abuse cases. In addition to such a system the Ministry should establish and maintain a group of social workers, especially highly trained in the investigative phases of abuse cases, so as to enable one or more of such workers to attend in a local community, promptly upon the request of the local children's aid society, to investigate any incident or allegation of abuse and to pursue any court proceedings which might ensue. Depending upon the nature of such court proceedings the local Crown attorney or the solicitor for the local children's aid society shall be instructed to present the material in court.

47. I FURTHER RECOMMEND THAT the Ministry's personnel conducting any such investigation, while having authority and responsibility for the conduct thereof, shall generally recognize the valid concerns of the local children's aid society for the eventual and long-term success of the management and treatment of the case. To that end the Ministry's personnel shall keep the local children's aid society fully and promptly advised of what has been revealed by the investigation. They should seek to obtain information required or desired by the society for its purposes in managing and treating the case. In similar vein the local children's aid society shall keep the Ministry's personnel advised of the society's plan or programme for the management and treatment of the case and the rationale therefor. In the event of any difference of opinion between the Ministry's personnel assigned to the case and the personnel of the local children's aid society, the matter should be resolved by more senior personnel of the Ministry whose decision should be the determination of the issue as between the Ministry and the local children's aid society, provided however that, if either party feels it necessary or advisable so to do, the question may be raised before the judge sitting in the court hearing the matter who may take the difference of opinion into consideration in determination of the main issue or issues in the proceedings.

48. I RECOMMEND THAT the Ministry establish and maintain a cadre or roster of experts in the field of child care, and particularly the detection, investigation, assessment, management and treatment of child abuse, thus including representatives from a number of professions, disciplines and callings, sufficient to enable it to provide prompt assistance by qualified persons to any children's aid society needing assistance. Such cadre should be composed of a sufficient number of such qualified persons as may be necessary to ensure that the person or persons with the skills and experience required in the particular circumstance will be quickly available to provide the necessary assistance, including physical attendance. A senior member of that cadre should always be available for consultation with the local children's aid societies and to assign responsibilities to appropriate members thereof, including authority to travel.

49. I RECOMMEND THAT the Ministry establish and maintain a list of persons employed or practicing in Ontario who possess special skills or knowledge and whose advice or assistance might be made available on some basis to assist a local children's aid society or multidisciplinary team in a particular case requiring the application of special skill or knowledge.

50. I RECOMMEND THAT, while the local children's aid societies have primary responsibility for the care and protection of children residing within the geographical areas served by the societies, the Ministry must assert and acknowledge that it has an overriding and superior responsibility for the care and protection of all children in Ontario. To that end the Ministry should ensure that it always has sufficient resources of personnel, equipment and funds to enable it to perform its duties and obligations to children.

51. I RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act and the Regulations thereunder to provide that, for the purposes thereof, social work is a profession to be practiced only by persons possessing suitable academic qualifications and membership in a professional association to be created under the statute and to possess powers to regulate the practice of the profession including appropriate powers to establish standards of qualification for membership, competence and ethics and to impose penalties for failure to maintain qualification, for incompetence or for breach of ethics. Only members of the profession shall be entitled to be classified as social workers for the purposes of the Child Welfare Act.

52. I THEREFORE RECOMMEND THAT the Ministry seek amendment of the Child Welfare Act and the Regulations made thereunder to provide;
1. that all persons entering the profession of social work for the purposes of child welfare after a date to be fixed by the Minister shall have successfully completed a course in social work at a school of social work that is a member of the National Committee of Canadian Schools of Social Work of the Association of Universities and Colleges of Canada;
2. that persons who have served children's aid societies as social workers since a date to be fixed by the Minister shall be entitled to continue to do so provided they successfully complete courses as required or prescribed by the governing body of the profession and approved by the Minister;
3. that members of the profession maintain satisfactory standards by successfully completing courses or examinations prescribed from time to time by the governing body of the profession and approved by the Minister.

53. I FURTHER RECOMMEND THAT the practices and procedures of each children's aid society provide that cases of abuse shall be assigned only to a worker or workers who have successfully completed special courses upon abuse prescribed by the governing body of the profession and approved by the Minister. If no such worker is on the staff of the society it shall seek and receive appropriate assistance from the Ministry.

54. I RECOMMEND THAT the Ministry, in clear and unequivocal written language understandable to everyone, even those who have no experience in writing, reading or understanding official documents, affirm to children's aid societies and their boards of directors, local directors and social workers that, in the planning for and the management and treatment of any case of abuse, no major decision is to be made on the basis of the society's financial position. The decision to apprehend the child or to leave him or her in the family home and the decision to retain the child in the physical control of the society or to return him of her to the family, with or without supervision, would certainly be major decisions. The child's very life depends upon each of those decisions. The Ministry should equally clearly state its willingness to give favourable consideration to requests for additional funds to support correct decisions which might otherwise over-tax a society's financial resources.

55. By way of extension to the immediately preceding recommendation I RECOMMEND THAT each children's aid society, again in similarly clear and unequivocal written language, inform all of its social workers of the Ministry's affirmation of that position and the society's intention to adhere thereto.

56. I RECOMMEND THAT the Ministry ensure that no child who has been abused or is in danger of abuse be at a disadvantage in relation to protection and care by reason of the location of that child anywhere in Ontario. The Ministry should ensure that each children's aid society have or have readily available to it the personnel and facilities to ensure that the child is not at any such disadvantage. If local conditions make it unreasonable for a children's aid society to have such personnel and facilities or to have them readily available, the Ministry must provide such personnel and facilities or make them available for the child, but they need not be in the same community as the child's home.

57. I RECOMMEND THAT the Ministry establish and maintain, possibly in co-operation with the Ontario Association of Children's Aid Societies, an ongoing programme to select and train social workers who may aspire to positions of responsibility as supervisors or local directors of children's aid societies. Successful completion of any course developed and presented as part of such a programme should be required of anyone seeking appointment to or employment in such a position. As mentioned elsewhere among these recommendations in other areas the programme should contain provision for facilities to enable persons who have achieved such positions to keep themselves aware of new or current developments and trends in relation thereto. The local children's aid societies should be assisted and encouraged by the Ministry in making it possible for appropriate members of their personnel to attend such courses.

58. I RECOMMEND THAT the Ministry continue its programme of establishing standards to be met by children's aid societies in all areas of service to children and families, particularly in relation to the protection of children from abuse. Those standards should be subject to ongoing study and revision by the Ministry's personnel in the light of the experience of the Ministry and children's aid societies with those standards. The Ministry should affirm its desire and willingness to receive and consider comment upon its previously published standards and recommendations with a view to revision thereof if necessary or desirable. The Ministry should ensure that copies of these standards are made available to every children's aid society and, through each children's aid society, to each social worker in the employ of that children's aid society. The Ministry should maintain a service to ensure that every children's aid society and every social worker in the employ of the children's aid societies is advised of any revision of the standards. The standards should be accompanied by explanatory and supporting material and, particularly for the supervisory employees of the children's aid societies, materials to be used by supervisory personnel during instruction or training of subordinate personnel in relation to the standards. Each children's aid society shall ensure, by adequate instruction and training of its personnel in relation to the standards and by adequate supervision of the work of each of its social workers, that the standards of service established by the Ministry are met or exceeded. The Ministry in its turn shall ensure, by adequate supervision and inspection of each children's aid society, that such standards are met or exceeded. The Ministry shall furnish to the president and local director of each children's aid society a written report upon any such supervision and inspection.

59. I RECOMMEND THAT the Ministry ensure that the intention of the authors of the Garber Report as expressed in their recommendation numbered 4, be fulfilled and that standards be established, kept current, published and enforced so that there will be uniformity in the bases and criteria employed by children's aid societies in preparing their own records in respect of child abuse cases or reports and in preparing reports thereon to the Ministry or other authorities.

60. I RECOMMEND THAT the Ministry take all appropriate and necessary steps to ensure that accreditation of public hospitals will require or involve such hospitals to meet or exceed specified standards for actions to be taken, procedures to be followed and reports to be made by the personnel of such hospitals, including medical practitioners enjoying any privilege therein, in any instance of abuse or suspicion of abuse or professional opinion of any of the hospital's personnel qualified to express such an opinion that the child, even from birth, will be a high risk child. Such actions and procedures shall include participation in the discussions and decisions of any multi-disciplinary team of persons formed or requested by a children's aid society to assist in any phase of the investigation, management or treatment of any case of child abuse.

61. I RECOMMEND THAT the Ministry, in co-operation with other appropriate ministries of government, ensure that physicians and nurses, in private practice or in the employ of public hospitals or public health bodies who provide care, whether pre-natal or both, to mothers and children receive special training to enable them to detect, recognize and assess any matter which might indicate that any child, even a new-born child, may be a "high-risk" child. Hospitals and public health bodies should provide in-service training on such matters to doctors and nurses on their staffs or enjoying any privilege in their facilities to ensure that they remain current. Such training should emphasize that if a doctor or nurse, having recognized the presence of any such matter, should form the opinion that a child may be a "high-risk" child he or she is, by the Child Welfare Act, required to report such opinion and the information or observations on which it is based to a children's aid society.

62. I RECOMMEND THAT the Child Welfare Act be amended to ensure that no action for making the report shall be instituted against any doctor or nurse who reports to a children's aid society that in his or her opinion a child may be in need of protection although there is no "hard" evidence of abuse of the child or the child's need for protection, provided the report is not made maliciously and the opinion is not expressed maliciously.

63. I THEREFORE RECOMMEND THAT as part of its practices and procedures each children's aid society establish a process whereby any one or more of its social workers, concerned about the propriety or correctness of any decision made or proposed to be made in any case, may, without fear of reprisal and without appearing to threaten the authority or position of the team of social workers, the supervisor or the local director, as the case may be, bring the case and the particular decision to the attention of a supervisor, the local director or the board of directors, as the case may be, for review and determination. In the same vein the practices and procedures of each children's aid society should enable each employee to have a means of ensuring that full information about any case is available to any supervisor or the local director or the board of directors.

64. I RECOMMEND THAT each children's aid society should employ or retain the services of one or more solicitors, preferably with training or experience in relation to family law, child welfare and child protection and with skills of advocacy. The advice of such a solicitor should be immediately available to the society's social workers at any time in relation to any report or instance of abuse or suspected abuse. The society's social workers should be required to consult with such a solicitor at appropriate stages of the investigation of such report or instance of abuse and subsequently in relation to any decision to be made during the management or treatment of the case including court proceedings of any sort. The solicitor should be advised of all conferences in relation to the case whether within the children's aid society or elsewhere, such as at the community child abuse team, and the matters to be discussed thereat. The solicitor should be required to attend such conferences if, in his or her opinion, the subject matter may involve matters of law or procedure, or if any social worker participating in the conference requests that the solicitor attend. All of that should form part of the society's manual of practices and procedures.

65. I RECOMMEND THAT counsel employed or retained by the children's aid society in respect of any report or instance of child abuse should establish and maintain liaison and co-operation with the Crown attorney and police to determine whether or not, in relation to the matter, any charge, under the Criminal Code, the Child Welfare Act or any other statute, is contemplated by the Crown attorney or police or, in the light of information available to the children's aid society, should be considered. In the event any such charge is laid counsel for the children's aid society should co-operate with the Crown attorney to ensure an orderly and complete investigation and then, if required, an efficient procedure in court to complete all matters including the prosecution of any such charge and any application which the society may make in respect of the care of the child. That duty to co-operate corresponds to the duty of the Crown attorney and police to co-operate with the children's aid society as set forth in a subsequent recommendation.

66. I RECOMMEND THAT, if a charge under section 40 of The Child Welfare Act be laid by the police, a children's aid society or a private complainant, the Crown attorney be advised forthwith and thereafter the Crown attorney shall be responsible for the conduct of the prosecution of any such charge or for staying or withdrawing it. The justice before whom any person appears for the purpose of swearing an information alleging the offence should be responsible for ensuring that the Crown attorney is so advised. That latter may require the Ministry to obtain the co-operation of the Ministry of the Attorney General.

67. I RECOMMEND THAT the Crown attorney, if not accepting the responsibility himself or herself, assign one solicitor employed or retained by the Crown attorney to have full responsibility for the conduct of the prosecution of any charge under section 40 of The Child Welfare Act.

68. I RECOMMEND THAT the police, as well as the Crown attorney or solicitor responsible for the conduct of the prosecution of a charge under section 40 of The Child Welfare Act, immediately establish and maintain liaison and co-operation with the local children's aid society. One purpose of such liaison would be to discuss and to determine whether or not an application should be made in court for an order declaring the child to be a child in need of protection and, if such an application should be made, by whom and by what process. That liaison and co-operation should involve all phases of the two proceedings, whether or not they are joined, and should continue until both are completed. That duty to co-operate corresponds to the duty of the children's aid society to co-operate with the Crown attorney and police which is set forth in a preceding recommendation. This will involve the co-operation of the Ministry of the Attorney General and the Ministry of the Solicitor General with the Ministry.

69. I THEREFORE RECOMMEND THAT the Ministry, through appropriate channels of government, seek to ensure that the Crown attorney in each county and district in Ontario be provided with sufficient funds to ensure that personnel and facilities are available to each such Crown attorney to enable implementation of recommendations in this Report requiring the involvement of the Crown attorney.

70. I THEREFORE RECOMMEND THAT the Ministry, the Ontario Association of Children's Aid Societies and the children's aid societies in Ontario maintain an ongoing survey of proceedings under the Child Welfare Act in the provincial courts (family division) to ascertain whether or not any inadequacy in the facilities of those courts, including the numbers of judges appointed thereto, contributes to any unreasonable delay in the hearing and disposition of such proceedings particularly those involving allegations of child abuse or children apparently in need of protection. If such survey should indicate that there is, in any such court in any county or district, unreasonable delay in such matters because of any inadequacy of the court's facilities, the Ministry, through appropriate procedures of government, should seek to ensure that the facilities of that court are improved so as to prevent any such delay.

71. I RECOMMEND THAT in all proceedings under the Child Welfare Act it should be incumbent upon the court in which the proceedings are conducted to determine whether separate legal representation is necessary or desirable to protect the interests of the child who is the real subject matter thereof. If the court determines that such representation is necessary or desirable it shall direct that it be provided. In making that latter determination the court should hear submissions, with or without testimony as the court may decide, from the parties to the proceedings as well as from anyone who may seek to be the child's legal representative to protect or advance the child's interest. Any direction for the provision of such legal representation should identify the solicitor or solicitors who shall provide it and shall provide for the remuneration of such solicitor or solicitors. Unless or until some arrangement is made for the provision of such legal representation under the Ontario Legal Aid Plan the cost thereof should be borne out of the general revenues of the Province of Ontario except in such cases where, with the knowledge and approval of the court, remuneration of such solicitor or solicitors is available and provided from some other source.

72. I RECOMMEND THAT the Ministry consider the amendment of section 20 of the 1978 legislation to incorporate the preceding recommedation #71 and to provide that in the circumstances described in subsection 3 of section 20 the provision of such legal representation shall be deemed to be and shall be desirable.

73. I RECOMMEND THAT within the profession of social work there be a category of social worker who shall be required to satisfy appropriate requirements of knowledge, training and experience and thus to be entitled to a further designation to denote his or her qualifications as a specialist in the field of child abuse. The requirements of qualification entitling anyone to such designation shall be established by the regulatory body of the profession.

74. I RECOMMEND THAT consideration be given to an amendment of the Child Welfare Act or the Evidence Act to provide that the opinions expressed by social workers formed by them in relation to child welfare matters shall be admissible as evidence upon proceedings under the Child Welfare Act and shall be accorded weight in the same way as the professional opinions of other professional persons are found to be admissible and are weighed.

75. I RECOMMEND THAT consideration be given to an amendment of the Child Welfare Act or the Evidence Act to facilitate the use of photographs, either coloured or black and white, of abused children in the provincial courts (family division). Such an amendment should provide that such photographs shall be admissible in evidence upon the proceedings unless the party opposing their admission satisfies the judge that they should not be admitted.

76. I THEREFORE RECOMMEND THAT the Ministry, through appropriate channels of government, seek to ensure the amendment of the Child Welfare Act and the Evidence Act of Ontario so as to provide that in any proceedings under the Child Welfare Act arising out of an allegation that a child has been abused or is apparently in need of protection a man or woman is a competent and compellable witness for the prosecution or applicant, as the case may be, or for his or her spouse who is the accused or respondent, as the case may be, if the child named in the proceedings is the child of the spouses or either of them or if the spouses are or either of them is in loco parentis to the child.

77. I FURTHER RECOMMEND THAT the Ministry, through appropriate channels of government, request that consideration be given to an amendment of the Canada Evidence Act to like effect.

78. I THEREFORE RECOMMEND THAT the Ministry through appropriate channels of government seek amendment of the Child Welfare Act so as to provide that,

1. if, within ten years after a child has been found to be a child in need of protection, fresh proceedings are instituted to determine whether the child is in need of protection, proof of the earlier finding shall be prima facie proof in the fresh proceedings that the child is in need of protection; and
2. if, within ten years after a child has been found to be a child in need of protection, proceedings are instituted to determine whether another child of the same family is in need of protection, evidence of the earlier finding shall be admissible as evidence upon the new proceedings to be given such weight as the judge hearing the matter may determine.

79. I RECOMMEND THAT all aspirants for appointment or election to the board of directors of a children's aid society be required to attend and participate in an orientation course conducted by the society wherein they will be informed and instructed as to the objects, purposes and duties of the society and the function, duties, powers and obligations of the members of the board of directors as a board, as members of the committees of the board, as individuals and as officers of the corporation. Such course is to be developed and presented by the personnel of the society so as to incorporate or reflect local conditions, but should contain elements that are common across the province. Each course, while distinctive, should be based upon material which should be prepared and distributed by the Ministry or the Ontario Association of Children's Aid Societies.

80. I RECOMMEND THAT upon any review of the operations of a children's aid society by personnel from the Ministry, the Ministry shall promptly furnish to the board of directors of that society a written report upon that review setting forth the date or dates thereof, the purposes thereof, the observations thereon, comment, assessment and evaluation in respect of the observations, and the recommendations, if any, of those who conducted the review and their superiors. If either the board of directors or the Ministry feel it necessary or desirable appropriate personnel from the Ministry shall meet with the board of directors of the children's aid society to discuss the contents of the written report and the implementation of any recommendation. If any such report contains any negative criticism of the operation of the children's aid society the Ministry shall ensure that the matter is reviewed again after the children's aid society has had appropriate time to correct any deficiency or error in its procedures or operations.

31. I RECOMMEND THAT the Ministry should ensure that there is a facility readily available to assist and advise the boards of directors of children's aid societies in relation to the qualifications of and performance of duties by management and supervisory personnel of the societies. Pending progress toward the recognition of social work as a profession with a governing and regulating body which may provide such a service and pending any system of accreditation of children's aid societies which may provide such a service, the Ministry should provide it or arrange with the Ontario Association of Children's Aid Societies to provide it. The existence of such a service should be made known to the boards of directors of each children's aid society at appropriate times, perhaps annually shortly after the annual meeting of the society. Such a service should extend to and be devised to deal with any complaint made by a member of the public in respect of the society or any of its supervisory personnel.

82. I RECOMMEND THAT the children's aid societies, with the active encouragement and involvement of the Ministry and the Ontario Association of Children's Aid Societies, adopt and implement a policy of appointment and employment of local directors and supervisors for fixed terms with provisions for the extension of any term if the society and the appointee so agree during, say, the last year or six months of the fixed term.

83. I THEREFORE RECOMMEND THAT the Ministry institute a programme of ongoing review of the structure and means of functioning of the board of directors of each children's aid society. The review should extend to and include the structure and function of the committees of that board of directors and any other committees within the society in which members of the board of directors participate or which report directly to the board of directors. Such reviews should be conducted at appropriate intervals, perhaps in conjunction with other ministerial reviews or perhaps by random attendance of personnel from the Ministry at meetings of the board of directors. The purpose of such reviews should be to assist the board of directors to establish and maintain a useful and functional structure of itself and its committees and efficient and productive meetings of itself and its committees. Each review should be followed by a written report to the board of directors setting forth the observations made during such review and any appropriate recommendations or directions arising therefrom to ensure compliance with statutory or regulatory requirements and, hopefully, to ensure that the interest of members of the board of directors is maintained and their individual talents are best used for the benefit of the society and the children and families it serves.

84. I THEREFORE RECOMMEND THAT when a children's aid society is considering the appointment of a local director it must, in addition to any other inquiries or investigations it may care to make, request comment from the Ministry upon the professional qualifications, job experience and general reputation of each applicant or person who is being considered for appointment. There should be a corresponding obligation upon the Ministry to respond in writing to each such reference in absolute frankness and with immunity from any liability, civil or criminal, providing the response is made without malice. That may require amendment of the Child Welfare Act. The response from the Ministry would then be one of the factors to be considered by the board of directors of the Society in its deliberations.

85. I RECOMMEND THAT, when a children's aid society is considering the appointment of supervisors of its social workers, it must request comment by the Ministry in respect of each person being considered for such an appointment. Such comment should be upon the suitability and ability of each person proposed for such appointment. The Ministry should be obliged to respond frankly and fully in writing with immunity from liability of any sort in the absence of malice. Any response by the Ministry should be but one factor in the deliberations of the board of directors of the society.

86. I RECOMMEND THAT, if social work is granted legislative recognition as a profession and if the legislation establishes a governing body to govern or regulate the practice of that profession, children's aid societies proposing to appoint anyone to the position of local director or supervisor of social workers must, in writing, inform that governing body of each such proposal, with the name of each person being considered for such appointment. The governing body should be free to comment upon the suitability of the person proposed and his or her ability to perform the duties of the office. Provided the comment is given without malice the governing body should be immune from any liability which anyone might seek to impose upon it for its having made the comment. The governing body's comment shall be a factor to be considered by the board of directors of the society in its deliberations upon the appointment.

87. I RECOMMEND THAT the Ministry proceed to seek revision of the 1978 legislation in the following ways:

(a) by enlarging the scope of the operation of the Central Registry so as to permit it to receive and record at all times from all sources information and reports of child abuse or situations of children apparently in need of protection because of an unusual risk of abuse. The Registry should be equipped to record and store any such information or report and to collate it with any relevant information or report previously received, recorded and stored. The Registry should have personnel qualified to assess and evaluate all such information and reports and to take appropriate action in respect thereof. The appropriate action may be to decide that nothing need be done other than to receive the information. Or it may require the staff of the Registry to inform the local children's aid society and police force or other authorities immediately and then, in due time, to ensure that the local children's aid society has properly responded to the matter by investigation and report;

(b) by amending subsection 2 of section 49 thereof by deleting the clause "that may have been caused or permitted by a person who has or has had charge of the child;" and

(c) by amending subsection 2 of section 49 thereof by extending its scope so as to include an obligation to report any situation which, in the opinion of the official or professional person, indicates that a child is in an unusually high risk of being abused.

SCHEDULES

SCHEDULE 1-A

CALENDAR OF SITTINGS

Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

Day 1 - June 15, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
John M. Wing, Q.C.
Donald L. Whitman
Rosemary J. McCully
Allen Ingram

Witnesses

Nil

Transcript - Volume 1
Exhibits - #1-12 (inclusive)

Day 2 - July 4, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Donald L. Whitman
Donald Elliott
Allen Ingram

Agent Present

Murray Chitra

Witnesses

Ronald Turner
Donald W. Ross
James R. Allan
Christopher Gander
Edward J. Kennedy
Barry A. Wyville
Lyle J. Waters

Transcript - Volume 1A
Exhibits - #13-20 (inclusive)

Day 3 - July 5, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Donald L. Whitman
Donald Elliott
Allen Ingram

Agent Present

Murray Chitra

Witnesses

Donald W. Ross
Douglas G. Vandenberghe
Judith A. Vandenberghe
Madeline Cecile
Adrian Cecile
Abdul M. Khattab

Transcript - Volume 2
Exhibits - #21-24 (inclusive)

Day 4 - July 6, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Allen Ingram

Agent Present

Murray Chitra

Witnesses

George Brouwer
Catherine Maughan

Transcript - Volume 3
Exhibits - #25-40 (inclusive)

Day 5 - July 10, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully
Allen Ingram

Witnesses

Lucy Duncan, M.D.
Elizabeth Kuly
G. Patodia, M.D.

Transcript - Volume 4
Exhibits - #41-45 (inclusive)

Day 6 - July 11, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
John M. Wing, Q.C.

Allen Ingram
Donald L. Whitman

Witnesses

Brian E.V. McCrudden, M.D.
Kunwar Singh, M.D.
Malcolm D. Thorp, M.D.

Oral representation by
Corrine Lovatt

Transcript - Volume 5
Exhibits - #46-62 (inclusive)

Day 7 - July 12, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully
Allen Ingram
Donald L. Whitman

Witnesses

Edward Hibberd
Judge Q.L. Nighswander
Annals A. Popen

Transcript - Volumes 6 and 6A
Exhibits - #63-64

Day 8 - July 13, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully

Peter Merchant
Allen Ingram
Donald L. Whitman

Witnesses

Jennifer A. Popen
Wayne Chalmers
Betty L. Hewitt

Transcript - Volume 7
Exhibits - nil

Day 9 - August 9, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Joseph M. Donohue
B. Thomas Granger
Rosemary J. McCully
Peter Merchant
Donald L. Whitman
Allen Ingram

Witnesses

S. F. Jumean, M.D.
Peter C. McCabe
Audrey L. Dick

Transcript - Volume 8
Exhibits - #65-75 (inclusive)

Day 10 - August 10, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witness

Audrey L. Dick

Transcript - Volume 9
Exhibits - nil

Day 11 - August 11, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Joseph M. Donohue
Rosemary J. McCully
Peter Merchant
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witnesses

Audrey L. Dick
Harold R. Carter

Transcript - Volume 10
Exhibits - #76-82 (inclusive)

Day 12 - August 14, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witnesses

Mary I. Kirby
Lois E. Archer

Transcript - Volume 11
Exhibits - nil

Day 13 - August 15, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witness

Yuan Shirley Lo

Transcript - Volume 12
Exhibits - nil

Day 14 - August 16, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witnesses

Yuan Shirley Lo
Dorothy W. Myers
Mabel W. Harvey

Transcript - Volume 13
Exhibits - nil

Day 15 - August 17, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witness

Mabel W. Harvey

Transcript - Volume 14
Exhibits - #83-84

Day 16 - August 21, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger
Donald L. Whitman
Allen Ingram

Witnesses

Mabel W. Harvey
David A. Allen
Mildred P. Wood

Transcript - Volume 15
Exhibits - #85-90 (inclusive)

Day 17 - August 22, 1978

Counsel Present

Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger
Allen Ingram

Witnesses

John H. McPhedran
William J. Lovatt

Transcript - Volume 16
Exhibits - nil

Day 18 - August 23, 1978

Counsel Present

Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger
Allen Ingram

Witness

William J. Lovatt

Transcript - Volume 17
Exhibits - #91-104 (inclusive)

Day 19 - August 24, 1978

Counsel Present

Robert G. Murray

Joseph M. Donohue
B. Thomas Granger
Rosemary J. McCully
Allen Ingram

Witness

William J. Lovatt

Transcript - Volume 18
Exhibits - #105-110 (inclusive)

Day 20 - August 25, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger
Allen Ingram

Witnesses

Andrew M. Lang
Silvio J. Mainville

Transcript - Volume 19
Exhibits - #111-112

Day 21 - September 6, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
Donald L. Whitman
B. Thomas Granger
Allen Ingram

Witnesses

Sandra L. Saul
James R. Allen
Winona J. Hoad
Kathy Mitchell

Transcript - Volume 20
Exhibits - #113-114

Day 22 - September 7, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
Allen Ingram
Joseph M. Donohue
Peter Merchant

Witness

Stephen Charko

Transcript - Volume 21
Exhibits - #115-116

Day 23 - September 8, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
Allen Ingram
Joseph M. Donohue

Witnesses

Stephen Charko
Barry A. Wyville

Transcript - Volume 22
Exhibit - #117

Day 24 - September 12, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
B. Thomas Granger

Witness

John K. Macdonald

Transcript - Volume 23
Exhibits - #118-128 (inclusive)

Day 25 - September 13, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
B. Thomas Granger
Joseph M. Donohue
Donald Elliott

Witnesses

John K. Macdonald
Bruce R. Heath

Transcript - Volume 24
Exhibits - #129-133 (inclusive)

Day 26 - September 14, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
B. Thomas Granger
Donald Elliott

Witnesses

Bruce R. Heath
Arne Petersen

Transcript - Volume 25
Exhibits - #134-135

Day 27 - September 15, 1978

Counsel Present

Nicholson D. McRae, Q.C.

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger

Donald Elliott
Allen Ingram

Witnesses

Arne Petersen
Margaret Farina

Transcript - Volume 26
Exhibits - nil

Day 28 - September 20, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
Donald Elliott
B. Thomas Granger

Witnesses

Margaret Farina
Harry Zwerver

Transcript - Volume 27
Exhibits - #136-138 (inclusive)

Day 29 - September 21, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
Joseph M. Donohue

Witness

Harry Zwerver

Transcript - Volume 28
Exhibits - #139-141 (inclusive)

Day 30 - September 22, 1978

Counsel Present

Robert G. Murray

Rosemary J. McCully
B. Thomas Granger

Witness

Harry Zwerver

Transcript - Volume 29
Exhibits - nil

Day 31 - September 27, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Peter Merchant
John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully

Witness

Jennifer A. Popen

Transcript - Volume 30
Exhibits - nil

Day 32 - September 28, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Peter Merchant
B. Thomas Granger
Rosemary J. McCully
John M. Wing, Q.C.

Witnesses

Jennifer A. Popen
William Higgins

Transcript - Volumes 31 and 32
Exhibits - #142-143

Day 33 - September 29, 1978

Counsel Present

Robert G. Murray

John M. Wing, Q.C.
B. Thomas Granger
Rosemary J. McCully

Witness

William Higgins

Transcript - Volume 33
Exhibit - #144

Day 34 - October 3, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully

Witnesses

Robert M. Sharen - (presented oral and written submission)
Raymond Wyrzykowski - (presented oral submission)
Debroah Ginn
Inez Williams - (presented oral submission)
Frances Kameka

Transcript - Volume 34
Exhibits - #145-146

Day 35 - October 16, 1978

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger
Rosemary J. McCully

Witness

Francis J. Turner, Ph.D.

Transcript - Volume 35
Exhibit - #147

Day 36 - October 17, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
John M. Wing, Q.C.

Witness

Herbert A. Sohn, Ph.D.

Transcript - Volume 36
Exhibits - #148-149

Day 37 - October 18, 1978

Counsel Present

Robert G. Murray

Rosemary J. McCully
B. Thomas Granger

Witness

Robert Bates, M.D.

Transcript - Volume 37
Exhibit - #150

Day 38 - October 19, 1978

Counsel Present

Robert G. Murray

B. Thomas Granger
Rosemary J. McCully
Donald L. Whitman
Joseph M. Donohue

Agent Present

Murray Chitra

Witnesses

Nil

Transcript - Volume 38
Exhibits - #151-152

Day 39 - January 8, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
Joseph M. Donohue
B. Thomas Granger, Q.C.
Donald L. Whitman
Carl Fleck, Q.C.
Brenda J. Bowlby
Peter Merchant
Raymond V. Donohue

Agent Present

Murray Chitra

Witnesses

Lloyd John Clark
Douglas G. Vandenberghe - (presented oral and written submissions)
Sister Rita Heenan

Submissions

(Oral and written submissions) Peter Merchant
(Oral and written submissions) B. Thomas Granger, Q.C.
(Oral and written submissions) Donald L. Whitman

Transcript - Volume 39
Exhibits - #153-170 (inclusive)

Day 40 - January 9, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
B. Thomas Granger, Q.C.
Carl Fleck, Q.C.

Agent Present

Murray Chitra

Witnesses

Nil

Submissions

(Oral and written submissions) Murray Chitra
(Oral and written submissions) Rosemary J. McCully

Transcript - Volume 40
Exhibits - #171-173

Day 41 - January 10, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
B. Thomas Granger, Q.C.
Brenda J. Bowlby
Allen Ingram

Witnesses

Nil

Submissions

(Oral submissions) Rosemary J. McCully
(Oral and written submissions) B. Thomas Granger,Q.C.

Transcript - Volume 41
Exhibit - #174

Day 42 - January 11, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Rosemary J. McCully
B. Thomas Granger, Q.C.
Brenda J. Bowlby
Allen Ingram

Witnesses

Nil

Submissions

(Oral and written submissions) B. Thomas Granger Q.C.
(Oral and written submissions) Brenda J. Bowlby

Transcript - Volume 42
Exhibits - nil

Day 43 - January 15, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger, Q.C.
Donald L. Whitman
Rosemary J. McCully

Witnesses

Dorothy W. Myers
Betty L. Hewitt

Submissions

(Oral and written submissions) B. Thomas Granger Q.C.

Transcript - Volume 43
Exhibit - #175

Day 44 - January 16, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

B. Thomas Granger, Q.C.
Rosemary J. McCully
Brenda J. Bowlby

Witnesses

Nil

Submissions

(Oral and written submissions) B. Thomas Granger Q.C.

Transcript - Volume 44
Exhibits - nil

Day 45 - January 17, 1979

Counsel Present

Robert G. Murray

Rosemary J. McCully
B. Thomas Granger, Q.C.
Carl Fleck, Q.C.
Raymond V. Donohue

Witnesses

Nil

Submissions

(Oral and written submissions) B. Thomas Granger Q.C.
(Oral and written submissions) Carl Fleck, Q.C.
(Oral submission) Raymond V. Donohue

Transcript - Volume 45
Exhibit - #176

Day 46 - July 16, 1979

Counsel Present

Nicholson D. McRae, Q.C.
Robert G. Murray

Joseph M. Donohue
Rosemary J. McCully
B. Thomas Granger, Q.C.

Witnesses

Nil

Submissions

(Written submission) Rosemary J. McCully
(Oral submission) Joseph M. Donohue

Transcript - Volume 46
Exhibits - #177-182 (inclusive)

SCHEDULE 1-B

COUNSEL APPEARING BEFORE THE JUDICIAL INQUIRY

Ms. Brenda J. Bowlby London, Ontario	- Associate Counsel with Mr. Thomas Granger, Q.C.
Mr. Joseph M. Donohue Sarnia, Ontario	- Counsel for Mr. William Lovatt
Mr. Raymond V. Donohue Sarnia, Ontario	- Counsel for St. Joseph's Hospital, Sarnia; and Mr. A. M. Khattab
Mr. Donald Elliott Sarnia, Ontario	- Counsel for the Ontario Association of Children's Aid Societies, Mrs. Margaret Farina and Mr. Arne Petersen
Mr. Carl Fleck, Q.C. Sarnia, Ontario	- Counsel for the Sarnia Police Force and its members
Mr. Bradley Thomas Granger, Q.C. London, Ontario	- Counsel for the Children's Aid Society, Sarnia, as a Corporate Body, it's members, directors and staff with the exception of Mr. W. Lovatt and Mrs. M. Harvey
Mr. Allen Ingram London, Ontario	- Associate Counsel with Mr. Thomas Granger, Q.C.
Mr. Peter Merchant Sarnia, Ontario	- Counsel for Mrs. Jennifer A. Popen
Mrs. Rosemary J. McCully Toronto, Ontario	- Counsel for the Ministry of Community and Social Services, Toronto and it's staff

Mr. Donald L. Whitman - Counsel for
Sarnia, Ontario Mrs. Mabel Harvey

Mr. John M. Wing, Q.C. - Counsel for
Sarnia, Ontario Mr. Annals A. Popen

AGENT APPEARING BEFORE THE JUDICIAL INQUIRY

Mr. Murray Chitra - Student at law
Toronto, Ontario Agent for the Ministry of
Correctional Services
Mr. George Brouwer and
Mrs. Catherine Maughan

SOLICITORS MAKING WRITTEN REPRESENTATIONS TO THE JUDICIAL INQUIRY

Mr. Colin L. Campbell - Solicitor for
Toronto, Ontario Dr. M. Thorp, Dr. K. Singh
and Dr. S. Jumean

Mr. R. E. Rowcliffe - Solicitor for
Toronto, Ontario Dr. M. Thorp

SCHEDULE 1-C

LIST OF EXHIBITS

Exhibit Number	Description of Exhibit
1.	ORDER by The Honourable Keith C. Norton, Minister of Community and Social Services appointing His Honour, Judge H. Ward Allen, a Judge for the County and District Courts of the Counties and Districts of Ontario to investigate all matters relating to the care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and County of Lambton.
2.	Affidavit of Publication and tear sheets of advertisements of Notices of Public Hearing from the following newspapers: a) The Sarnia Gazette b) The St. Clair Gazette c) The Plympton Wyoming Gazette d) The Lambton County Gazette
3.	Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Forest Standard newspaper.
4.	Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Sarnia Observer newspaper.
5.	Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Watford Guide-Advocate newspaper.

6. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Advertiser-Topic newspaper. (Petrolia, Ontario)

7. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the Windsor Star newspaper.

8. Affidavit of Publication and tear sheet of advertisement of Notice of Public Hearing from the London Free Press newspaper.

9. Tear sheet of advertisement of Notice of Public Hearing from The Chatham Daily News newspaper.

10. Copy of letter sent to all interested Counsel by the Executive Secretary to the Judicial Inquiry. This letter sets forth the time, date and location of commencement and sittings of the Judicial Inquiry.

11. Certified copy of Papers and Documents of Children's Aid Society of the City of Sarnia and the County of Lambton from the Records of the Ministry of Consumer and Commercial Relations of the Province of Ontario.

12. Pamphlet copy of The Child Welfare Act Revised Statutes of Ontario - Chapter 64, as amended to August 31, 1975.

13.A) Four Colour photographs of Kim Anne
B) Popen showing injuries -- photographs
C) taken August 31, 1975.
D)

14.A) Ten colour photographs of Kim Anne Popen (post-mortem) - showing injuries - photographs taken August 11, 1976.
B)
C)
D)
E)
F)
G)
H)
I)
J)

15. Certified Copy of Investigation Report, dated June 16, 1975, City of Sarnia Police Department, commencing June 16, 1975 to August 31, 1975.

16. Summons to a Person Charged With an Offence addressed to Mrs. Jennifer Popen Chapter 64, Section 40(1) of the Child Welfare Act, R.S.O., 1970.

17. Summons to a Person Charged with an Offence addressed to Mr. Annals Popen Chapter 64, Section 40(1) of the Child Welfare Act, R.S.O., 1970.

18. Copy of Hospital Discharge Summary (Miss Kim Popen) dated September 5, 1975, by Doctor K. R. Singh (not signed - see Exhibit #24).

19. Confidential Crown Counsel Brief prepared by Constable B. Wyville, Sarnia Police Force and dated October 23, 1975.

20. Certified copy of Record of Proceedings before His Honour Judge Q. L. Nighswander in the Provincial Court (Family Division) for the dates of November 17, 1975, January 19, 1976, February 23, 1976 and March 29, 1976.

20.A Certified copy of excerpt of hearing held before His Honour Judge Q. L. Nighswander in the Provincial Court (Family Division) on February 23, 1976.

21. Copy of Orders Respecting Wards of Children's Aid Societies signed by His Honour Judge Q. L. Nighswander on February 25, 1976, in relation to Kim Anne Popen.

22. Copy of Memorandum from A. M. Khattab, St. Joseph's Hospital, Sarnia to Mrs. M. Harvey, Children's Aid Society, Sarnia, dated September 4, 1975, noting that Miss Kim Popen may need some assistance after leaving hospital.

23. Copy of Memorandum from A. M. Khattab, St. Joseph's Hospital to the Children's Aid Society, dated September 8, 1975, noting "This case requires deep investigation which we are sure you will conduct."

24. Copy of Hospital Discharge Summary (Miss Kim Popen) signed by Doctor K. R. Singh.

25. Pre-Sentence Report Re: Annals Ambrose Popen prepared by G. Brouwer - Charge Section 40(1) Chapter 64 of the Child Welfare Act, 1970; dated March 29, 1976.

26. Letter from James J. Curtin, M.D., F.R.C.P.(c) to Mr. I. T. Walters, Senior Probation and Parole Officer Re: Annals Popen - dated March 19, 1976.

27. Probation Order of His Honour Judge Q. L. Nighswander, Provincial Court (Family Division) dated March 29, 1976, Re: Annals Ambrose Popen.

28. Certificate of Conviction in Provincial Court (Criminal Division) Re: Annals Ambrose Popen (Section 40(1) of the Child Welfare Act).

29. Information of Constable B. Wyville, Sarnia Police Force, dated October 16, 1975, alleging that Annals and Jennifer Popen, "being together and having the custody of a child Kim Anne Marie Popen, unlawfully did fail to protect the child contrary to Chapter 64, Section 40(1) of the Child Welfare Act, Revised Statues of Ontario."

30.-38. Monthly Report Sheets of Volunteer Probation Officer, Kate Maughan, Ministry of Correctional Services Re: Annals Ambrose Popen.

30. Month of June 1976;
31. Month of July 1976;
32. Month of August 1976;
33. Month of September 1976;
34. Month of October 1976;
35. Month of November 1976;
36. Month of December 1976;
37. Month of January 1977;
38. Months of February and March 1977.

39. Copy of Pre-Sentence Report Re: Jennifer Angela Popen, Prepared by G. Brouwer. Charge Section 217 Criminal Code of Canada Manslaughter.

40. Copy of Pre-Sentence Report Re: Annals Ambrose Popen, Prepared by G. Brouwer. Charge Section 217 Criminal Code of Canada Manslaughter.

41. Letter to Judge George Thomson, Ministry of Community and Social Services, dated December 16, 1977 from Lucy Duncan M.D., D.P.H., Director and Medical Officer of Health, The Lambton Health Unit.

42. Directive to the Nursing Department, The Lambton Health Unit, dated June 16, 1978, from Dr. Lucy M. C. Duncan, Procedure Re: Child Abuse Records.

43. Child Health Record - The Lambton Health Unit Re: Kim Anne Popen, years 1974 to 1976 (inclusive).

44. Report of Post-mortem Examination made upon the body of Kim Popen dated August 26, 1976.

45. Diagrams of anterior and posterior views showing injuries as noted in the Report of Post-mortem Examination (Exhibit #44).

46. Radiological Report - St. Joseph's Hospital Re: Miss Kim Anne Popen - March 22, 1975 - M. F. Bennett, M.D.

47. Radiological Report - St. Joseph's Hospital Re: Miss Kim Anne Popen - March 25, 1975 - B. E. McCrudden, M.D.

48. Radiological Report - St. Joseph's Hospital Re: Miss Kim Popen - August 31, 1975 - M. F. Bennett, M.D.

49. Radiological Report - St. Joseph's Hospital Re: Miss Kim Popen - September 1, 1975 - B. E. McCrudden, M.D.

50. Radiological Report - St. Joseph's Hospital Re: Miss Kim Popen - September 1, 1975 - B. E. McCrudden, M.D.

51. Consultation Form - St. Joseph's Hospital Completed by K. R. Singh, M.D. - dated 26/3/75 Re: Kim Anne Popen.

52. Consultation Report - March 27, 1975 Consultant K. R. Singh, M.D. Re: Miss Ann Marie Popen.

53. Consultation Form - St. Joseph's Hospital - Completed by K. R. Singh, M.D. - dated August 31, 1978 - Re: Miss Kim Popen.

54. Admission and Discharge Form - St. Joseph's Hospital - dated August 31, 1975 - Re: Miss Kim Popen.

55. Consultation Report. August 31, 1975 Consultant - K. R. Singh, M.D. - Re: Miss Kim Popen.

56. Transcript of taped conversation between K. R. Singh, M.D. and Mrs. Jennifer A. Popen which took place at St. Joseph's Hospital, Sarnia, on August 31, 1975.

57. Guidelines to staff of St. Joseph's Hospital, Sarnia, prepared by the Child Abuse Committee, dated June 4, 1978.

58. Report of S. Jumean, M.D. - Dated April 28/29, 1975 - Re: Miss Kim Anne Popen.

59. Emergency Entrance Report - March 22, 1975 - St. Joseph's Hospital, Sarnia - Re: Kim Anne Popen.

60. History Report - Prepared by M.D. Thorp, M.D., on March 25, 1975 - Re: Baby Kim (Anne Marie) Popen.

61. Emergency Entrance Report - August 31, 1975 - St. Joseph's Hospital, Sarnia - Re: Kim Popen

62. History Report - Prepared by M.D. Thorp, M.D. on August 31, 1975 - Re: Miss Kim Popen.

63. Certified copy of Confidential Crown Counsel Brief, prepared by Constable B. Wyville, Sarnia Police Force, dated October 23, 1975 and with three letters attached thereto.

64. Certified Copy of Proceedings before His Honour Judge Q. L. Nighswander on the 8th day of September, 1975 in the Provincial Court (Family Division) upon an Application of the Children's Aid Society, Sarnia under Section 26(b) of the Child Welfare Act, Re: Kim Anne Popen.

65. Notes made by S. Jumean, M.D. - Re: Kim Anne Popen for period ending Jaunary 12, 1976.

66. Admission Form - St. Joseph's Hospital, Sarnia - Re: Miss (Kim) Ann Marie Popen dated March 22, 1975.

67. Admission Form - St. Joseph's Hospital, Sarnia - Re: Miss Ann Marie Kim Popen dated April 28, 1975.

68. Report of William Gannon, M.D. dated August 6, 1976 - Re: Kim Popen.

69. Report of Medical History, Children's Aid Society, Sarnia to S. Jumean, M.D. - Re: Kim Popen - period September 12, 1975 to May 26, 1976.

70. Letter to His Honour Judge H. Ward Allen dated July 14, 1978 from M. Thorp, M.D.

71. Letter to M. Thorp, M.D., dated July 25, 1978 from His Honour Judge H. Ward Allen.

72. Letter to His Honour Judge H. Ward Allen - dated July 26, 1978 from R. E. Rowcliffe, Barrister and Solicitor, on behalf of M. Thorp, M.D.

73. Child Care File from the Children's Aid Society of the City of Sarnia and County of Lambton. Opened on September 5, 1975, Re: Kim Anne Popen.

73.A History of the Children's Aid Society involvement with the Popen family, (Removed from the Child Care File - Exhibit #73).

74. Family Services File from the Children's Aid Society of the City of Sarnia and County of Lambton, opened August 31, 1975 Re: Annals and Jennifer Popen.

74.A History of the Children's Aid Society involvement with the Popen family (Removed from the Family Services File - Exhibit #74).

75. Minutes of Team 1 Meetings June 3, 1975 to September 30, 1975 (Ordered sealed by His Honour Judge H. Ward Allen and to be kept apart from other exhibits due to their confidentiality in respect of other wards and clients of the Children's Aid Society.

76. Form - Family Services Case Management Information System.

77. Intake Information Form (Team 1 Log) Confidential.

78. Children's Aid Society Index Card
Annals and Jennifer Popen
Children: Kim Anne Marie and Karie
First dated August 1975.

79. Letter to the Children's Aid Society, Sarnia attention of Mr. Carter dated November 18, 1975, from William F. Higgins, Barrister and Solicitor, per: Sam F. Harvey.

80. Monthly Report - Family Services, Children's Aid Society - Month of August - 1975, Confidential.

81. Staff Evaluation - Children's Aid Society, Sarnia - Re: H. R. Carter - 1975 - Confidential.

82. Staff Evaluation - Children's Aid Society, Sarnia - Re: Harold Carter - 1977 - Confidential.

83. Report for Child Welfare Branch, Ministry of Community and Social Services, Toronto, dated December 8, 1977, Prepared by the Children's Aid Society, Sarnia.

84. Minutes of Meeting - November 7, 1977 - Financial Information Systems Committee, Ministry of Community and Social Services.

85. Forms (White and Green), Children's Aid Society of the City of Sarnia and County of Lambton - Intake Slip.

86. Minutes of Meeting, Board of Directors - Children's Aid Society, Sarnia on Thursday, December 15, 1977.

87. Minutes of Meeting, Board of Directors - Children's Aid Society, Sarnia on Tuesday, February 28, 1978.

88. Report on Survey of the Children's Aid Society, Sarnia - Survey completed by P. McKen and G. Dummitt - Child Welfare Supervisor, Sylvio Mainville.
Statistics Used - month of September 1972 dated April 19th, 197 .(sic)

89. Report to the Board of Directors, Children's Aid Society, Sarnia on Child Welfare Surveys - Survey completed by Tiiu Ingel and Dianne Poole.
Child Welfare Supervisor: Sylvio Mainville.
Statistics Used - month of September 1973 dated February 22, 1974.

90. Minutes of Meeting, Board of Directors, Children's Aid Society, Sarnia on Tuesday, February 26, 1974.

91. Letter to Harold E. Fulton, Esq. Messrs, Campbell, Jarvis, McKenzie and Fulton, Barristers and Solicitors, dated September 22, 1977 from C. I. Scott, Deputy Secretary, The Law Society of Upper Canada Re: Ruling of the Professional Conduct Committee concerning a question of Conflict of Interest.

92. Memoranda to all Local Directors of Children's Aid Societies from the Director, Children's Services Bureau, Ministry of Community and Social Services, dated July 25, 1975, February 17, 1976, March 22, 1976, June 15, 1976, July 23, 1976 November 16, 1976, January 21, 1977, January 26, 1977 May 16, 1977, October 2, 1977, November 4, 1977 and April 7, 1978.

93. Guidelines for Practice and Procedure in Handling Cases of Child Abuse.
Published by the Ontario Association of Children's Aid Societies, Toronto, Ontario; July 1976.

94. Standards of Practice and Procedure for Services to Children in Alternate Care.
Published by the Ontario Association of Children's Aid Socities - June, 1974.

95. Memorandum to Presidents and Local Directors of Ontario Children's Aid Societies Re: 1976 Operating Budget from the Director, Children's Services Bureau, Ministry of Community and Social Services, Toronto; dated December 16, 1975.

96. Memoranda to Ontario Children's Aid Societies from the Ministry of Community and Social Services, Toronto; dated March 12, 1976, January 13, 1976 and January 15, 1976.

97. Letter to President, Lambton Children's Aid Society, dated May 7, 1976 from the Minister, Ministry of Community and Social Services, Toronto; re: 1976 estimates.

98. Minutes of Meeting, Board of Directors - Children's Aid Society, Sarnia; Tuesday, January 6, 1976.

99. Monthly Reports of Local Director - Children's Aid Society, Sarnia; Months of April, May, June, September, October and November of 1976.

100. Memorandum to all Ontario Children's Aid Societies, dated February 15, 1978, from the Director of Child Welfare, Ministry of Community and Social Services, Toronto; Re: Indices of numbered memoranda.

101. Report on Selected Issues and Relationships - Task Force on Community and Social Services; January, 1974.

Report on Ministry Organization Structure - Task Force on Community and Social Services; June, 1973.

102. Brief for need of Increased Staff Complement, Children's Aid Society of the City of Sarnia and County of Lambton with covering letter attached dated March 27, 1975.

103. Report of The Task Force on Child Abuse (The Garber Report) June 19, 1978.

104. Auditors' Reports to the Board of Directors, Children's Aid Society, Sarnia and County of Lambton for the years of 1973 to 1977 (inclusive).

105. Letter to Director, Children's Services Bureau, Ministry of Community and Social Services, Toronto; dated December 13, 1974, from William J. Lovatt, Local Director, Children's Aid Society; Re: 1975 Budget.

106. Letter to Mr. Bill Lovatt, Director, Children's Aid Society, Sarnia, dated January 30, 1976 from Lorne C. Henderson - Minister Without Portfolio; with copy of letter attached thereto addressed to The Honourable James Taylor, Q.C.; Minister of Community and Social Services, Toronto.

107. Letter to Mr. Bill Lovatt, Director, Children's Aid Society, Sarnia; dated February 25, 1976, from Lorne C. Henderson, Minister Without Portfolio with copy of letter attached thereto received from The Honourable James Taylor, Q.C., Minister of Community and Social Services, Toronto.

108. Form Letter from the Director, The Family and Children's Services of Hastings County dated February 9, 1978.

109. Estimate of Expenditure - year 1978 Submitted by William Lovatt, Local Director of the Children's Aid Society on February 16, 1978 to The Honourable Minister of Community and Social Services and others.

110. Estimate of Expenditure - year 1978. Submitted by Peter McCabe, Acting Local Director, Children's Aid Society, Sarnia and Assistant Executive Director, Essex County, Children's Aid Society on June 27, 1978 to The Honourable Minister of Community and Social Services and others.

111. Copies of documents from the files of the Ministry of Community and Social Services:
- Lambton Field Services File; June, 1969;
- Children's Aid Society; Lambton File, June-July 1971;
- Special Study; Lambton Field Services File, 1971;
- Field Worker's Report; Lambton, September 30, 1972;
- Children's Aid Society; Field Report, September 30, 1973;
- Children's Aid Society; Field Report, September 30, 1974.

112. Report on Persons Allegedly Causing Physical Ill-Treatment of a Child:

1. Report dated September 8, 1975 over the signature of William Lovatt, Local Director of the Children's Aid Society;
2. Report dated September 27, 1976 over the signature of William Lovatt, Local Director of the Children's Aid Society.

Both reports addressed to Miss Betty C. Graham, Director, Child Welfare Branch; Re: Kim Anne Marie Popen.

113. Letter to The Honourable William Davis, Premier, dated July 20, 1976 from the Staff Association of the Children's Aid Society of the City of Sarnia and County of Lambton.

114. Letter to the President, Staff Association of the Children's Aid Society of the City of Sarnia and County of Lambton, dated August 6, 1976, from The Honourable James Taylor, Q.C., Minister of Community and Social Services, Toronto.

115. Communication - Child Welfare Branch, Ministry of Community and Social Services, Toronto; dated April 14, 1976, to the Children's Aid Society, Sarnia, requesting a report on the current status of case File No. 75-5196 - Kim Anne Marie Popen and with reply signed by William Lovatt and dated May 7, 1976.

116. Contentious Issue Report; Re: Death of Child Kim Anne Marie Popen, dated December 12, 1977; Prepared by Child Welfare Branch, Ministry of Community and Social Services.

117. Statement by The Honourable James Taylor, Q.C., Minister of Community and Social Services to the Children's Aid Societies, Thursday, December 18, 1975.

118. Organizational Chart, Ministry of Community and Social Services; July 1977.

119. Organizational Chart, Child Welfare Branch, Ministry of Community and Social Services; May 1978.

120. Organizational Chart, Children's Services, Ministry of Community and Social Services.

121. Letter to the Director, Child Welfare Branch, Ministry of Community and Social Services; dated March 17, 1977, from H. B. Cotnam, M.D., Chief Coroner for Ontario Re: Kim Anne Popen.

122. Letter to H. B. Cotnam, M.D., Chief Coroner for Ontario dated March 25, 1977, from the Director of Child Welfare, Ministry of Community and Social Services, Re: Kim Anne Popen.

123. Memorandum to the Director, Child Welfare Branch, dated May 13, 1977, from William J. Lovatt in response to that Branch's request for information (see Exhibit #115).

124. Memorandum to all Ontario Children's Aid Societies, dated January 21, 1977, from the Director, Child Welfare Branch, Ministry of Community and Social Services, Re: Protection of Children at Risk.

125. Memorandum to all Children's Aid Societies and Directors of Children's Residences, dated January 26, 1977 from the Director, Child Welfare Branch, Ministry of Community and Social Services, Re: Deaths of Children (in Child Welfare and corrections systems).

126. Child Abuse in Ontario - Research Report 3, Ontario Ministry of Community and Social Services - Research and Planning Branch, November 1973.

127. A working manual for Board Members of Children's Aid Societies, Prepared by Ontario Association of Children's Aid Societies. First Printing, 1975.

128. Minister's Opening Comments - Meeting of Children's Aid Societies to Discuss Implementation Planning of the Report of the Task Force on Child Abuse, September 8, 1978;
and
Ministry Response to the Recommendations of the Task Force on Child Abuse (See Exhibit #103 - "The Garber Report").

129. Letter to the President, Children's Aid Society, Sarnia, dated May 7, 1976 from The Honourable James Taylor, Q.C., Ministry of Community and Social Services, Re: 1976 Estimates.

130. Bill 114; An Act to revise the Child Welfare Act - First Reading, June 8, 1978.

131. Bill 114; An Act to revise the Child Welfare Act (Reprinted for consideration by the Social Development Committee) - Second Reading, June 19, 1978.

132. Letter to Mr. R. N. McQuarrie, President, Ontario Association of Children's Aid Socities, dated December 19, 1977, from David A. Allen, President, Children's Aid Society, Lambton County.

133. A Review of the Popen Case, Prepared for the Children's Aid Society of the City of Sarnia and County of Lambton by a Committee chaired by Mrs. Margaret Farina, Associate Executive Director, Ontario Association of Children's Aid Socities. February 24, 1978 (See Exhibit #145 "The Farina Report" dated February 15, 1978).

134. Policies in Regard to Family Services, Children's Aid Society, Sarnia.

135. Policies for Child Care Services, Children's Aid Society, Sarnia.

136. News release - January 31, 1978 - Ministry of Community and Social Services entitled "Norton announces Lambton Children's Aid Society Investigation."

137. Extracts of the Official Record Legislature of Ontario - February 22 and 23, 1978 - Re: death of Kim Anne Popen.

138. Interim Report to the Board of Directors, Children's Aid Society of the City of Sarnia and County of Lambton prepared by Harry Zwerver, Special Field Consultant to the Children's Aid Society, Sarnia and Director, Planning and Development, Child Welfare Branch, Ministry of Community and Social Services, dated April 11, 1978.

139. Estimate of Expenditure - year 1978 (First submission) Submitted by William Lovatt, local Director, Children's Aid Society, on November 29, 1977 to the Honourable Minister of Community and Social Services and others.

140. Letter to Mr. D. Allen, President, Lambton Children's Aid Society, dated January 12, 1978, from Edward Magder, Assistant Director, Ministry of Community and Social Services, Re: Review of 1978 advance estimate of expenditures.

141. Workload Analysis - Children's Aid Society, Sarnia, Lambton - compiled by Harry Zwerver, Special Field Consultant to the Children's Aid Society, Sarnia and Director, Planning and Development, Child Welfare Branch, Ministry of Community and Social Services, dated September 21, 1978.

142. Statement of Jennifer A. Popen, dated June 10, 1978 - received by Investigator L. J. Clark, at the Kingston Penitentiary for Women.

143. Transcript of Hearing before His Honour Judge Q. L. Nighswander, Provincial Court (Family Division) on January 19, 1976, Re: Section 40(1) of the Child Welfare Act, Annals Ambrose Popen and Jennifer Angelle Popen (sic).

144. Letterhead form "Children's Aid Society of The City of Sarnia and the County of Lambton."

145. A Review of the Popen Case prepared for The Children's Aid Society of the City of Sarnia and the County of Lambton by a Committee chaired by Mrs. Margaret Farina, Associate Executive Director, Ontario Association of Children's Aid Societies, February 15, 1978. (See Exhibit #133 "The Farina Report" dated February 24, 1978).

146. Statement of Mr. Robert M. Sharen, Reeve, Town of Grand Bend, Ontario, dated June 15, 1978 and presented orally to the Judicial Inquiry on October 3, 1978.

147. Curriculum Vitae - Francis Joseph Turner, Ph.D., Dean of Social Work at Wilfred Laurier University, Waterloo, Ontario.

148. Legal Issues in Child Abuse - Bernard M. Dickens, Working paper of the Centre of Criminology, University of Toronto, January 1976.

149. Ontario Medical Review - Volume 45, Number 1, January 1978 - Child Abuse, Special Report.

150. Twenty-nine colour photographs obtained from slide photographs of a presentation given by Robert Bates, M.D., Director, Child Abuse Programs, Hospital for Sick Children, Toronto.

151. Lethal Family Situations - Child Abuse Deaths in England, the United States and Canada, An International Comparison by Cyril Greenland, McMaster University, Hamilton, Ontario. August 1978.

152. The Interim Report - The College of Physicians and Surgeons of Ontario. February 1978.

153-165. Notices to persons who may be affected by the Report:

153. To: Jennifer A. Popen;
154. To: M. D. Thorp, M.D.;
155. To: R. Kunwar Singh, M.D.;
156. To: S. F. Jumean, M.D.;
157. To: Robert Cook, Chief of Police, Sarnia Police Force;
158. To: Judy Vandenberghe;
159. To: Douglas Vandenberghe;
160. To: A. M. Khattab;
161. To: The Administrator, St. Joseph's Hospital, Sarnia, Ontario;
162. To: William J. Lovatt;
163. To: William F. Higgins;
164. To: S. Lotta, M.D.;
165. To: B. McCrudden, M.D.

166. Statement of Judy and Douglas Vandenberghe, dated December 19, 1978 and presented orally to the Judicial Inquiry by Douglas Vandenberghe on January 8, 1979.

167. Letter to Robert G. Murray, Associate Counsel to the Judicial Inquiry, dated December 5, 1978 from B. E. McCrudden, M.D., Re: Notice (see Exhibit #165 and #175) and attached thereto the reply of Robert Grant Murray, Associate Counsel to B. E. McCrudden, M.D.

168. Letter to Mr. N. D. McRae, Counsel to the Judicial Inquiry, dated December 27, 1978 from Mr. William F. Higgins, Re: Notice (see Exhibit #163).

169. Written submission made on behalf of Mabel Harvey by her Counsel, D. L. Whitman.

170. Written submission made on behalf of Jennifer Popen by her Counsel, Peter R. Merchant.

171. Written submission made on behalf of the Ministry of Correctional Services and its staff by their Counsel, Murray W. Chitra.

172-173. Notices to persons who may be affected by the Report:

172. To: Andrew Lang;
173. To: Edward Hibbert.

174. Written submission made on behalf of the Children's Aid Society of the City of Sarnia and County of Lambton by their Counsel B. Thomas Granger, Q.C. and Ms. B. J. Bowlby.

175. Letter to Robert G. Murray, Associate Counsel to the Judicial Inquiry, dated January 2, 1979 from B. E. McCrudden, M.D., Re: Notice (see Exhibit #165 and #167).

176. Written submission made on behalf of the Sarnia Police Force and Officers James Allen, Barry Wyville and Christopher Gander by their Counsel, Carl E. Fleck, Q.C.

177. Written submission made on behalf of the Ministry of Community and Social Services and its staff by their Counsel, Rosemary J. McCully.

178. Additional written submission made on behalf of the Ministry of Community and Social Services by it's Counsel, Rosemary J. McCully.

179. Bill 114; An Act to revise the Child Welfare Act - Third Reading, December 12, 1978.

180. Affidavit of William John Lovatt for use upon an Application for Judicial Review Pursuant to the Judicial Review Procedure Act, 1971 S.O. 1971, Chapter 48.

181. Cross-examination on an Affidavit of William John Lovatt (Exhibit #180) taken before Mr. David Mackay Jackson, Local Registrar and Special Examiner, at Sarnia, Ontario on March 29, 1979.

182. Notice of withdrawl by the applicant William Lovatt of his Application for Judicial Review dated January 24, 1979.

SCHEDULE 1-D

WITNESSES APPEARING BEFORE THE JUDICIAL INQUIRY

1.	ALLAN, (Staff Sergeant) James	- Sarnia Police Force
2.	ALLEN, David A.	- Member Board of Directors and Past President - Children's Aid Society for the City of Sarnia and County of Lambton
3.	ARCHER, Lois Eleanor	- Co-ordinator of Child Placement Services and Supervisor of Child Care Worker - Children's Aid Society, Sarnia
4.	BATES, (M.D.) Robert	- Director - Child Abuse Program, Hospital for Sick Children, Toronto (For particulars of Curriculum Vitae see Schedule 1-E)
5.	BROUWER, George	- Probation and Parole Officer - Ministry of Correctional Services, Sarnia
6.	CARTER, Harold Raymond	- Social Worker 2, Children's Aid Society, Sarnia (For particulars of Curriculum Vitae see Schedule 1-E)
7.	CECILE, Adrian	- Children's Aid Society Foster parent to Kim Anne Popen
8.	CECILE, Madeline	- Children's Aid Society Foster mother to Kim Anne Popen

9.	CHALMERS, (Constable) William K.	- Sarnia Police Force
10.	CHARKO, Stephen	- Supervisor of Field Services, Child Welfare Branch, Ministry of Community and Social Services, Toronto - (For particulars of Curricula Vitae see Schedule 1-E)
11.	CLARK, (Provincial Constable), Lloyd John	- Petrolia Detachment, Ontario Provincial Police
12.	DICK, Audrey Lillian	- Social Worker 2 Children's Aid Society, Sarnia
13.	DUNCAN, (M.D.) Lucy	- Medical Officer of Health, County of Lambton
14.	FARINA, Margaret	- Chairman of Committee formed at the request of the President of the Children's Aid Society, Sarnia to study and review the case handling and decision making of the Popen case. (For particulars of Curriculum Vitae see Schedule 1-E)
15.	GANDER, (Constable) Christopher James	- Sarnia Police Force
16.	GINN, Deborah	- Babysat Kim Anne Popen
17.	HARVEY, Mabel T.	- Supervisor of Family Services, Children's Aid Society, Sarnia - (For particulars of Curriculum Vitae see Schedule 1-E)
18.	HEATH, Bruce Ross	- Member of "Farina" Committee - (For particulars of Curriculum Vitae see Schedule 1-E)

19. HEENAN, (Sister) Rita - Executive Director, St. Joseph's Hospital, Sarnia

20. HEWITT, Betty Louise - Registered Nurse - Formerly on staff at St. Joseph's Hospital, Sarnia

21. HIBBERD, Edward - Assistant Crown Attorney, County of Lambton - (For particulars of Curricula Vitae see Schedule 1-E)

22. HIGGINS, William - Barrister and Solicitor, Former member Board of Directors, Children's Aid Society, Sarnia - (For particulars of Curricula Vitae see Schedule 1-E)

23. HOAD, Winona - Volunteer worker Children's Aid Society, Sarnia

24. JUMEAN, (M.D.), S.F. - Popen family doctor

25. KAMEKA, Francis - Nephew of Annals Popen

26. KENNEDY, (Constable), Edward James - Sarnia Police Force

27. KHATTAB, Abdul M. - Director of Social Services, St. Joseph's Hospital, Sarnia - (For particulars of Curricula Vitae see Schedule 1-E)

28. KIRBY, Mary I. - Social Worker 2, Children's Aid Society, Sarnia

29. KULY, Elizabeth - B.Sc. (Nursing), Public Health Unit County of Lambton

30. LANG, Andrew - Crown Attorney for the County of Lambton - (For particulars of Curricula Vitae see Schedule 1-E)

31. LO, Yuan Shirley - Social Worker 1, Children's Aid Society, Sarnia - (For particulars of Curricula Vitae see Schedule 1-E)

32. LOVATT, Corinne - Wife of William John Lovatt

33. LOVATT, William John - Former local Director, Children's Aid Society of the City of Sarnia and County of Lambton - (For particulars of Curricula Vitae see Schedule 1-E)

34. MAINVILLE, Sylvio J. - Director - Family and Children's Services for the City of St. Thomas and County of Elgin

35. MAUGHAN, Catherine - Volunteer Probation Worker, Ministry of Correctional Services, Sarnia

36. MITCHELL, Kathy - Former Volunteer Co-ordinator, Children's Aid Society, Sarnia

37. MYERS, Dorothy Winifred - Office manager, Children's Aid Society, Sarnia

38. MACDONALD, John Kennedy - Director - Child Welfare Branch, Ministry of Community and Social Services 1974-1978 - Area Planning Co-ordinator, Ministry of Community and Social Services - (For particulars of Curricula Vitae see Schedule 1-E)

39. McCABE, Peter - Assistant Executive Director of the Essex County Children's Aid Society -- Interim Director, Children's Aid Society, Sarnia - (For particulars of Curricula Vitae see Schedule 1-E)

40. McCRUDDEN, (M.D.), Brian Edward Victor - Radiologist, St. Joseph's Hospital, Sarnia

41. McPHEDRAN, John - President of the Board of Directors, Children's Aid Society, Sarnia

42. NIGHSWANDER (Judge) Q. Lloyd - Provincial Court Judge (Family Division) - (For particulars of Curricula Vitae see Schedule 1-E)

43. PATODIA, (M.D.) G. - Pathologist

44. POPEN, Annals Ambrose - Father of deceased Kim Anne Popen

45. POPEN, Jennifer Angela - Mother of deceased Kim Anne Popen

46. PETERSEN, Arne - Member of "Farina" Committee - (For particulars of Curriculum Vitae see Schedule 1-E)

47. ROSS, (Inspector), Donald, W. - Sarnia Police Force

48. SAUL, Sandra Lynn - Social Worker 2, Children's Aid Society, Sarnia

49. SHAREN, Robert Mark - Reeve, Town of Grand Bend, Ontario

50. SINGH, (M.D.), Kunwar - Chief of Pediatrics, St. Joseph's Hospital, Sarnia - (For particulars of Curriculum Vitae see Schedule 1-E)

51. SOHN, (Ph.D.), Herbert Alvin - Co-ordinator of the Child Abuse Program, Ministry of Community and Social Services, Toronto - (For particulars of Curriculum Vitae see Schedule 1-E)

52. THORP. (M.D.), Malcolm Duff - General medical practitioner - Sarnia

53. TURNER, (Constable) Ronald J. - Sarnia Police Force

54. TURNER, (Ph.D), Francis Joseph - Dean of Social work at Wilfred Laurier University - Waterloo, Ontario - (For particulars of Curriculum Vitae see Schedule 1-E)

55. VANDENBERGHE, Douglas - Close friend of Annals and Jennifer Popen

56. VANDENBERGHE, Judy - Close friend of Annals and Jennifer Popen

57. WATERS, (Staff Sergeant), Lyle J. - Sarnia Police Force

58. WILLIAMS, Inez - Oral submission to Inquiry with respect to the Lovatt family

59. WOOD, Patricia Mildred - Member of the Board of Directors, Children's Aid Society, Sarnia

60. WRYZYKOWSKI, Raymond - Barrister and Solicitor, Sarnia - Past President, Board of Directors of Children's Aid Society, Sarnia

61. WYVILLE (Constable) Barry A. - Sarnia Police Force

62. ZWERVER, Harry - Director of Planning and Development, Metropolitan Toronto Children's Aid Society and Special Field Consultant, Ministry of Community and Social Services - (For particulars of Curricula Vitae see Schedule 1-E)

SCHEDULE 1-E

Qualifications of Certain Witnesses Appearing Before the Judicial Inquiry

Robert Bates, M.D.

Doctor of Medicine - University of Toronto, 1968.

Two years specialty training in pediatrics at the Hospital for Sick Children, Toronto.

One year of further training in pediatrics at Sydney, Australia.

Chief medical resident at the Hospital for Sick Children, Toronto.

Fellowship in Pediatrics, 1973.

On full-time staff at Hospital for Sick Children, Toronto, until January 1978.

Appointed Director of Child Abuse, Hospital for Sick Children, Toronto, January 1973.

Member of the Garber Task Force on Child Abuse, June, 1978.

Has had papers published in various journals and text books, including Violence in the Family delivered to the Second International Conference of the Family Law Association, Montreal, P.Q., 1977.

Has given expert evidence on Child Abuse at all levels of court in Ontario.

Mr. Harold Carter

2 1/2 years at Stroud Polytechnical Institute, towards a Degree in a Bachelor of Arts Course.

1942 - 1946 Royal Air Force.

1946 - 1951 Part-time studies and Manager of a Radio and Television Store related to Air Force experience in radio.

1951 - emigrated to Canada.

Extension Course - University of Western Ontario - 1 Credit towards Degree.

1960 - Child Welfare Branch Course in Social Work.

1964 - Advanced Course in Social Work Child Welfare Branch.

Positions Held

Social Worker with the Children's Aid Society for the City of Sarnia and County of Lambton.

Social Worker II (1978) with the Children's Aid Society for the City of Sarnia and County of Lambton.

Mr. Stephen Charko

Two year course in Youth's Services - Augsburg, West Germany.

Master of Arts Degree - University of Ottawa.

Has taken numerous other courses in Social Work and Social Case Work at the University of Ottawa and supervisor and local director administrative courses.

Positions Held

Case worker in Family Services and Child Care Departments - Children's Aid Society of Ottawa and Carleton County.

Supervisor Family Service for Children's Aid Society of Stormount, Dundas and Glengarry.

Local Director, Children's Aid Society, District of Kenora.

Child Welfare Supervisor, Child Welfare Branch of Ministry of Community and Social Services.

Supervisor of Field Services for Child Welfare Branch from August, 1971.

Mrs. Margaret Farina

Bachelor of Arts - University of British Columbia, 1947.

Bachelor of Social Work - University of British Columbia, 1952.

Master of Social Work - University of Toronto, 1962.

Master of Education - University of Toronto, 1976.

Positions Held

Caseworker, intake worker, supervisor, branch director, regional director (family service), project director (research).

Field instructor for Faculty of Social Work, University of Toronto.

Executive Director, Ontario Association of Family Service Agencies.

Associate Executive Director, Ontario Association of Children's Aid Societies.

Program Development Specialist, Child Welfare Branch, Ministry of Community and Social Services (June, 1978).

Relevant Publications and Reports include:

Standards of Practice and Procedure for Children in Alternate Care (Ontario Association of Children's Aid Societies - 1974).

Guidelines for the Handling of Cases of Child Abuse (Ontario Association of Children's Aid Societies - 1976).

Assessment of the Family Counselling Services of the Children's Aid Society of the County of Simcoe, 1974.

A Study of the Costs of Children in Outside Paid Institutions, Children's Aid Society of Sudbury and Manitoulin, 1976.

Mrs. Mabel Winnifred Harvey

Bachelor of Arts - McMaster University, Hamilton, Ontario, 1945.

Master of Social Work - Smith College, Northhampton, Mass., 1953.

Positions Held

Social Worker, Children's Aid Society, City of Ottawa.

Social Worker, Children's Aid Society, City of Sarnia and County of Lambton.

Regina General Hospital, Regina, Saskatchewan - Psychiatric Wing.

Children's Home Society, Jacksonville, Florida.

Department of Child Welfare, New Orleans, Louisianna.

New Orleans Child Guidance Centre - Working with a team of Psychiatrists and Psychologists and Social Workers with Disturbed Children and their families.

Supervisor of Family Services for the Children's Aid Society for the City of Sarnia and County of Lambton.

Professional Associations

Member of The National Association of Social Workers (U.S.A.).

Member of the Academy of Certified Social Workers (U.S.A.).

Mr. Bruce R. Heath

Bachelor of Arts - University of Toronto, 1961.

Bachelor of Social Work - University of Toronto, 1963.

Master of Social Work - University of Toronto, 1964.

Positions Held

Social Worker, intake worker, supervisor of protection department, Catholic Children's Aid Society of Hamilton-Wentworth.

Unit supervisor (protection department) and district supervisor (family services department) Catholic Children's Aid Society of Metropolitan Toronto.

Local Director of the Children's Aid Society of the County of Huron.

Field consultant and supervisor, Child Welfare Branch, Ministry of Community and Social Services, Toronto.

Mr. Edward Hibberd

Called to the Bar of Ontario 1957.

Assistant Crown Attorney for the County of Lambton from 1974.

Mr. William Higgins

Barrister and Solicitor practising from 1954 in the City of Sarnia in private practice. Approximately 50 per cent of his practice is in the Family Law area.

Acted for Annals Popen and Jennifer Popen in 1975/76 upon charge of neglecting Kim contrary to section 40 of The Child Welfare Act, R.S.O. 1970 and upon Children's Aid Society application for Crown wardship of Kim.

Elected to the Board of Lambton County Children's Aid Society in March 2, 1976 and resigned early 1978.

Acted for Jennifer Popen upon manslaughter charge arising out of Kim's death from September, 1976 to trial in December, 1977.

Mr. Abdul Khattab

Master of Theology - University of Alazhar, Egypt.

Bachelor of Social Work - Institute of Social Services in Egypt.

Master's Degree in Sociology - University of Alberta.

Position Held

Social Worker - St. Joseph's Hospital in Sarnia from 1974.

Mr. Andrew Matthew Lang

Called to the Bar of Ontario in 1971.

Prosecutor with Federal Department of Justice 1971 and 1972.

Assistant Crown Attorney, County of Lambton from January 31st 1972 to August 31st 1973.

Crown Attorney for County of Lambton from September 1, 1973.

Mrs. Shirley Lo

Bachelor of Arts - Taiwan University, 1970.

Master's Degree in Elementary Education - University of Connecticut (Included courses in Social Psychology, Early Child Development, Charactertistics of Emotionally Disturbed Children, Elementary Science, Elementary Children's Literature, Curriculum Audio Visual Aids and Sociology and General Psychology in Undergraduate years).

Positions Held

Office Clerk, Connecticut, U.S.A.

Social Worker I, Children's Aid Society of the City of Sarnia and the County of Lambton.

Worked with a temporary retired Social Worker at the Children's Aid Society and worked with other Social Workers on their investigations.

Assigned the Kim Anne Popen Case.

Mr. William John Lovatt

Bachelor of Arts in Honours, Modern Language - University of Birmingham, England, 1951.

Bachelor of Social Work - University of Toronto, Ontario, 1963.

Accounting Course - LaSalle Business College, Chicago, U.S.A. (Correspondence Course).

Courses sponsored by the Child Welfare Branch of the Ontario Government and the Ontario Association of Children's Aid Societies.

Basic Child Welfare Course.

Supervisory Course.

Administrative Course.

Positions Held

Personnel Selection in Statistics - Royal Air Force.

Personnel Assistant to Senior Engineer, General Electric Company of England.

Case Worker - Children's Aid Society, City of Sarnia and County of Lambton.

Sole Supervisor for the Children's Aid Society, City of Sarnia and County of Lambton.

Local Director - Children's Aid Society, City of Sarnia and County of Lambton.

Community Involvement

Founding Director and Chairman of the Case Worker Selection Committee, Big Brothers of Sarnia Lambton.

Member of the City of Sarnia Youth Committee.

Founding member of the Coordinating Committee for Children and Youth in Sarnia Lambton.

continued

Mr. William John Lovatt

Community Involvement (continued)

Founding Consultant and on Personnel Committee Huron House Boys' Home.

Member and Chairman of the Program Committee of the Health, Education and Welfare Group in Sarnia.

Founding Director and member of the Planning and Program Committee and the Personnel Committee of the Social Planning and Research Council for Lambton County.

Member of the Mental Retardation District Working Group Lambton County.

Member of the Advisory Council Lambton College in the General Arts and Applied Science Department.

Member of the Advisory Council for Early Childhood Education and Basic Job Readiness Training.

Past Cub Master in the Scouting Movement.

Chairman of the Parish Hall at local church.

Member of the church choir.

Past member of the church Board of Management.

Mr. John Kennedy Macdonald

Bachelor of Science in Social Sciences - University of Ottawa.

Masters Degree in Social Work - University of Toronto.

Positions Held

Foster Care Home Finder - Catholic Children's Aid Society for Hamilton-Wentworth.

Administrative Assistant, Institutional Services Worker, Supervisor of Institutional Services, Director of Child Placement Resources - Catholic Children's Aid Society of Metropolitan Toronto.

Director of Child Welfare for Ministry of Community and Social Services from 1974 to 1978.

Area Planning Co-ordinator for the Ministry of Community and Social Services.

Mr. Sylvio Mainville

Bachelor of Arts Degree - University of Ottawa.

Masters Degree in Social Work - University of Ottawa.

Positions Held

Social Worker and later Supervisor - Cochrane and Timmins District Children's Aid Society.

Lecturer at School of Nursing in Timmins on human growth and behaviour.

Child Welfare Consultant with the Ministry of Community and Social Services from September 1970 until later January 1976.

Supervisor of Child Welfare Branch of said Ministry from 1970 to 1973.

Mr. Peter McCabe

Bachelor of Arts Degree - University of Western Ontario.

Masters Degree in Social Work - University of Ottawa.

Positions Held

Director of Catholic Social Services for the Diocese of London.

Social Worker - Children's Aid Society in Guelph.

Head of Children's Services Departmentt - Niagara Region Children's Aid Society.

Assistant to Local Director - Children's Aid Society, Windsor.

Interim Local Director, City of Sarnia and Lambton County Children's Aid Society.

Judge Quincy Lloyd Nighswander

Education and Experience

Post War - Worked as a Social Worker - Big Brothers' Organization in Toronto - 1 year.

Following 2 years, Field Worker - Children's Aid Society, County of Simcoe.

Then attended School of Social Work.

1950-1953 - Director of the Children's Aid Society of the County of Kent, Chatham.

1953-1968 - Ontario Provincial Probation Officer dealing with both adult and juvenile offenders.

1968 - Appointed Provincial Judge (Family Division) for Chatham and Kent County and Sarnia and Lambton County.

Employed full time as Provincial Judge (Family Division) for Chatham and Kent County and Sarnia and Lambton County May 1969 through September 1976.

1976 to 1977 Provincial Judge (Family Division) for Chatham and Kent County.

Mr. Arne Petersen

Bachelor of Arts - University of Copenhagen, Denmark, 1953.

Bachelor of Social Work - University of Manitoba, 1960.

Master of Social Work - University of Manitoba, 1961.

Positions Held

Social Worker, Department of Health and Welfare, Province of Manitoba.

Social Work Supervisor, Department of Health and Welfare, Province of Manitoba.

Social Work Supervisor, Children's Aid Society, London, Ontario.

Department Head of Family and Protective Services, Children's Aid Society, London, Ontario.

Teaching Master at Fanshaw College (Social Welfare Worker Course), London, Ontario.

Department Director of Children's Services and Resources, Children's Aid Society of London, Ontario.

Assisted as Director of Services at St. Thomas Children's Aid Society during the winter of 1975/76.

Serving as Board Member at the Madame Vanier Children's Services, London, Ontario and at Girls' Group Home Incorporated, London, Ontario.

Kunwar Singh, M.D.

Doctor of Medicine - University of Osmanian
Hyderabad, India, 1965.

Positions Held

Children's Hospital Montreal, P.Q. 1967 Specialized in Pediatrics.

Children's Hospital - Halifax, N.S., 1968 Specialized in Pediatrics.

Admitted to the Royal College of Physicians and Surgeons, 1971 and licensed to practice Medicine in the Province of Ontario - Established a practice in pediatrics, Sarnia, Ontario, 1971.

Chief of Pediatrics, St. Joseph's Hospital, Sarnia, Ontario.

Chairman, Child Abuse Committee, Sarnia General Hospital, Sarnia, Ontario, November, 1976.

Herbert A. Sohn, Ph.D

Bachelor of Arts - University of Florida, U.S.A., 1949.

Master of Social Work - University of Toronto, 1961.

Doctorate in Social Work - University of Toronto, 1975.

Positions Held

Youth worker, department head, assistant program director and director YMCA and YWHA, Toronto.

Human rights officer and assistant director, Ontario Human Rights Commission, Ministry of Labour.

Research and teaching assistant, University of Toronto.

Staff training consultant, Director of Vocational Rehabilitation, Director of the Senior Citizens Bureau, and Director of Social Services for Metropolitan Toronto.

Co-ordinator of Child Abuse Programs, Ministry of Community and Social Services, Toronto.

Francis J. Turner, Ph.D.

Bachelor of Arts - University of Western Ontario, 1949.

Theology - University of Western Ontario, 1949-51.

Bachelor of Social Work - University of Ottawa, 1953.

Master of Social Work - University of Ottawa, 1955.

Post-Masters Courses - University of Toronto, Faculty of Social Work, 1956-58 (part-time).

Doctorate in Social Work - Columbia University, School of Social Work, 1963.

Academic Career

Dean, Faculty of Social Work, Wilfred Laurier University, 1975.

Vice-president: Academic (acting), Wilfred Laurier University, September 1974 - September 1975.

Visiting Professor, Oxford University, Department of Social and Administrative Studies, 1974 (April-Sept.).

Dean, Faculty of Social Work, Wilfred Laurier University (Waterloo Lutheran), 1969 - April 1974.

Professor and Chairman, Department of Social Work, Memorial University of Newfoundland (leave of absence from W.L.U. to assist in establishing programme) 1968-69.

Professor, Waterloo Lutheran University, 1967-68.

Associate Professor, Waterloo Lutheran University, 1966-67.

Assistant Professor, University of Ottawa, School of Social Welfare, 1963-66.

continued

Extra University Relevant to Social Work

Chairman, Board of Accreditation, Canadian Association of Schools of Social Work, 1970-73.

Chairman, Ontario Association of Deans and Directors of Schools of Social work, 1970-73.

Consultant, Undergraduate programmes in Social Work; Kings College, Western, Lakehead University, Memorial University, Ryerson Polytechnical Institute, Universite de Moncton.

Professional Career

PRACTICE POSITIONS

Chief Social Worker	Ontario Hospital, New Toronto, 1962-63.
Unit Supervisor	Ontario Hospital, New Toronto, 1960-62.
Social Worker	Catholic Charities, White Plains, New York, 1960 (Summer).
Assistant Director	Catholic Social Service Bureau, Peterborough, 1957-59.
Social Worker	Catholic Children's Aid Society of Toronto, 1956-57.
Social Worker	Catholic Children's Aid Society of Windsor, 1952-53, 1955-56.

Has been involved in various capacities as author and editor in the publication of books and is the author of many learned articles, reports and lectures relating to social work.

Mr. Harry Zwerver

Bachelor of Arts in Behavioural Sciences - Calvin College, 1965.

Bachelor of Social Work - University of Toronto, 1966.

Completing Master's course in Social Welfare Policies - McMaster University.

Positions Held

Intake worker and community worker with North York branch of Metropolitan Toronto Children's Aid Society.

Co-ordinator of Lawrence Heights Family and Child Services.

Head of Family Services department and sometimes Acting Branch Director, Etobicoke branch of Metropolitan Toronto Children's Aid Society.

Instructor in Social Services and Law Enforcement - programs at Humber College.

Executive Assistant to the Executive Director of the Metropolitan Toronto Children's Aid Society.

Director of Planning and Development for the Metropolitan Toronto Children's Aid Society.

Chairman of the Financial Information Systems Review Committee co-sponsored by the Ministry of Community and Social Services and the Ontario Association of Children's Aid Societies.

March 7, 1978 appointed as a Special Field Consultant responsible for the operation of the City of Sarnia and Lambton County Children's Aid Society.

continued

Mr. Harry Zwerver (cont'd)

Community Involvement

Member of Child Welfare Case Management Information System Steering Council.

Member of the Children's Services Divisions Information Systems Task Force.

Member of the Divisions Provincial Standards Development Advisory Committee.

SCHEDULE 2-A

CALENDAR OF SIGNIFICANT EVENTS IN KIM'S LIFE INCLUDING COURT APPEARANCES

January 13, 1973	Annals Ambrose Popen and Jennifer Angela Popen (nee Mair) were married in Jamaica.
January 27, 1974	Jennifer Popen joined her husband in Sarnia, Ontario.
January 11, 1975	Kim was born in Sarnia.
March 22, 1975	Kim was admitted to hospital with a fracture of the left arm.
March 26, 1975	Dr. Singh suspected Battered Child Syndrome and referred case to hospital's social worker.
March 31, 1975	Kim suffered an upper respiratory infection.
April 12, 1975	Kim was treated, as a hospital out-patient, for an upper respiratory infection.
April 28, 1975	Kim was admitted to hospital suffering bronchiolitis and diaper rash.
June, 1975	At request of a relative, Mrs. Fay Popen, Dr. Jumean examined Kim in his office and noted multiple bruises.
June 16, 1975	By telephone Dr. Jumean notified the Sarnia Police Force and The Lambton Health Unit of Kim's injuries and her relative's allegation.

June 17, 1975	Residence of Mr. & Mrs. Cecil Popen visited by Sandra L. Saul, Winona J. Hoad and Police Constable Gander for purposes of inspecting Kim.
June 19, 1975	Dr. Jumean examined Kim in his office and notes same bruising as on previous visit that month.
August 31, 1975	Kim was admitted to hospital suffering multiple bruises and fresh fracture of the left arm.
August 31, 1975	Kim was taken into care of the Society after both parents signed a non-ward agreement effective for one month.
September 1, 1975	X-rays revealed two ribs on left side of Kim's rib cage had healing fractures.
September 5, 1975	Kim was released from hospital to care of Society and was placed in a foster home.
September 8, 1975	Provincial Court (Family Division). Application for wardship brought by the Society. Adjourned to October 29, 1975.
September 10, 1975	Kim removed from first foster home and placed in foster home of Mr. & Mrs. Cecile.
October 16, 1975	Information laid charging Annals Popen and Jennifer Popen under section 40(1) The Child Welfare Act "Fail to Protect Child."
October 29, 1975	Provincial Court (Family Division). Application for wardship adjourned to January 19, 1976.

October 30, 1975	Provincial Court (Criminal Division). Charge against Kim's parents under The Child Welfare Act adjourned to November 13, 1975.
November 13, 1975	Provincial Court (Criminal Division). Charge under The Child Welfare Act adjourned to November 17, 1975 and transferred to the Provincial Court (Family Division).
November 17, 1975	Provincial Court (Family Division). Annals Popen and Jennifer Popen enter pleas of Not Guilty to the charge under The Child Welfare Act. Adjourned to January 19, 1976.
January 19, 1976	Provincial Court (Family Division). Application for wardship and the charge under The Child Welfare Act both adjourned to February 25, 1976.
February 23, 1976	Provincial Court (Family Division). Annals Popen entered a plea of Guilty to the charge under The Child Welfare Act. The same charge against Jennifer Popen was withdrawn by the Crown. Adjourned to March 29, 1976 for pre-sentence report and sentence.
February 25, 1976	Provincial Court (Family Division). The Society's request for a two month wardship of Kim was increased to six months by the presiding judge.
March 29, 1976	Provincial Court (Family Division). Annals Popen placed on probation and sentence was suspended for a period of one year.

May 27, 1976	Kim was returned home to her parents.
August 4, 1976	Provincial Court (Family Division). The Society requested a supervision order. The matter was adjourned to September 13, 1976, with Kim in the care of the Society.
August 11, 1976	Kim was pronounced dead.
September 18, 1976	An Information was laid charging Annals Popen and Jennifer Popen under Section 217 *Criminal Code of Canada* - manslaughter.
August 11, 1977	Preliminary Hearing concluded at Provincial Court (Criminal Division). Annals Popen and Jennifer Popen committed to trial by judge and jury on the charge of manslaughter - Section 217 *Criminal Code of Canada*.
November 28, 1977	In the Court of the General Sessions of the Peace for the County of Lambton. Annals Popen and Jennifer Popen entered pleas of Not Guilty to the charge under Section 217 *Criminal Code of Canada* - manslaughter.
December 5, 1977	In the Court of the General Sessions of the Peace for the County of Lambton. Jennifer Popen changed her plea to that of Guilty to the charge of manslaughter - Section 217 *Criminal Code of Canada*. Remanded to December 31, 1977 for sentence upon being found guilty by the jury.

December 8, 1977	In the Court of the General Sessions of the Peace for the County of Lambton. Annals Popen found guilty by the jury on the charge of manslaughter - Section 217 Criminal Code of Canada. Remanded to December 21, 1977 for sentence.
December 21, 1977	In the Court of the General Sessions of the Peace for the County of Lambton. Jennifer Popen was sentenced to seven years imprisonment. Annals Popen was sentenced to one year imprisonment. (Annals Popen was subsequently released from custody pending his appeal against conviction.)
June 1, 1981	In the Supreme Court of Ontario Court of Appeal - Appeal by Annals Popen against his conviction only. Unaminous finding. "Accordingly, in the result the appeal is allowed, the conviction is quashed and a new trial is ordered."
December 8, 1981	In the Court of the General Sessions of the Peace in and for the County of Lambton. Annals Popen, upon a directed verdict by the presiding judge was found not guilty by a jury on the charge under Section 217 Criminal Code of Canada - manslaughter.

SCHEDULE 2-B

Extracts from The Child Welfare Act, R.S.O. 1970, Chapter 64 and Regulations thereunder as of March 26, 1975

INTERPRETATION

1. In this Act

(a) "approved estimate" means the estimate of net expenditures of a children's aid society finally approved under sections 8 to 11;

(b) "children's aid society" or "society" means a children's aid society approved by the Lieutenant Governor in Council under this Act;

(c) "Director" means a director appointed for all or any of the purposes of this Act;

(d) "local director" means the local director of a children's aid society appointed under this Act;

(e) "Minister" means the Minister of Community and Social Services;

(f) "municipality" means a county, metropolitan municipality, city or separated town, but does not include a city or separated town in a metropolitan municipality, and in a territorial district means a city, town, village, township or improvement district;

(g) "prescribed" means prescribed by the regulations;

(h) "regulations" means the regulations made under this Act. R.S.O. 1970, c.64, s.1; 1972, c.1, s.19(3); 1975, c.1, s.1.

2. (2) The Director shall,

(a) advise and supervise children's aid societies;

(b) inspect or direct and supervise the inspection of the operation and records of children's aid societies;

(c) exercise the powers and duties of a children's aid society in any area in which no society is functioning;

(d) inspect or direct and supervise the inspection of any place in which a child in the case of a society is placed;

(e) prepare and submit an annual report to the Minister;

(f) keep books of account of all moneys received by him, showing the receipts and disbursements;

(g) perform such other duties as are prescribed by this Act or the regulations or by the Lieutenant Governor in Council.

4. (1) Every children's aid society shall appoint a local director who shall be responsible to the board of directors of the society for the administration and enforcement of this Act and the regulations in the area in which the society has jurisdiction, who shall co-operate with the Director to this end and who shall carry out such other duties as are required of him by the constitution, by-laws and directions of the society.

(2) Every local director and every person designated by the board of directors of a society has for the purposes of this Act the powers of a constable and a school attendance counsellor, and he shall be deemed to be an officer within the meaning of section 10 of The Public Authorities Protection Act, and that section and the other provisions of that Act apply to him in the same manner and to the same extent as they do to the officers mentioned in that section. R.S.O. 1970, c.64, s.4.

5. The Director or a local director or any person acting under the authority of either of them may call to his aid in the performance of

his duties a member of the police force responsible for policing the area in which the aid is required. R.S.O. 1970, c.64, s.5.

6. (1) Every children's aid society shall be incorporated under The Corporations Act or a predecessor thereof and shall be approved by the Lieutenant Governor in Council.

(2) Every children's aid society shall be operated for the purposes of,

(a) investigating allegations or evidence that children may be in need of protection;

(b) protecting children where necessary;

(c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protecting of children;

(d) providing care for children assigned or committed to its care under this or any other Act;

(e) supervising children assigned to its supervision under this or any other Act:

(f) placing children for adoption;

(g) assisting the parents of children born out of wedlock or likely to be born out of wedlock and their children born out of wedlock; and

(h) any other duties given to it by this or any other Act.

(3) Every society shall provide at least the standard of services prescribed by the regulations.

(4) The by-laws of every society shall contain such provisions as the regulations prescribe, and a certified copy of the by-laws and any amendments thereto shall be filed with the Director forthwith after they are made, and no such by-laws or amendments shall come into

operation until they have been approved by the Minister. R.S.O. 1970, c.64, s.6.

7. (1) A children's aid society shall be governed by a board of directors composed of such municipal representatives as are determined under subsections 2 to 6 and the president, one or more vice-presidents, the secretary, the treasurer and such other officers and members as are determined, elected in such manner and for such period as the by-laws of the society provide.

8. (1) Every children's aid society shall before a date to be fixed each year by the Director, which date shall be no later than the last day of February in the year next following, prepare and file with the Director and, subject to section 10, with each municipality in the area in which the society has jurisdiction, an estimate of its next expenditures as defined by the regulations for operations, for the year next following, and the council of every municipality with whom the estimate is filed shall, subject to subsection 1 of section 11, grant its approval to the estimate within sixty days of the date fixed by the Director.

9. (1) After the estimate of net expenditures has been filed with the Director and approved by the council of each municipality with whom it was filed pursuant to subsection 1 of section 8, the Minister may approve the estimate as filed or he may, subject to subsection 2, vary the amount of the estimate and approve the estimate as so varied.

(2) Where the Minister intends to vary the amount of the estimate and to approve the estimate as so varied he shall, at least thirty days prior to the approval, give notice of his intention to the children's aid society and to the council of each municipality in the area in which the society has jurisdiction or to the District Child Welfare Budget Board, as the case may be. 1975, c.1, s.5, part.

11. (1) Where the council of a municipality or a district child welfare budget board does not agree with the amount of the estimate submitted

to it by a children's aid society or does not agree with the portion that is referable to the municipality it may, on or before the expiration of the period of time fixed under subsection 1 of section 8, for the approval of the estimate by the municipality or the District Child Welfare Budget Board, as the case may be, instead of granting its approval to the estimate under section 8 or 10, request the Minister to refer the matter to a child welfare review committee. R.S.O. 1970, c.64, s.11(1); 1975, c.1, s.7(1).

(2) Where a children's aid society, the council of a municipality or a District Child Welfare Budget Board does not agree with the amount of the estimate that the Minister intends to approve as varied under subsection 2 of section 9, any one of them may, before the Minister's approval is given under subsection 2 of section 9, request him to refer the matter to a child welfare review committee. 1975, c.1, s.7(2).

PART II

PROTECTION AND CARE OF CHILDREN

20. (1) In this Part,

(a) "child" means a boy or girl actually or apparently under sixteen years of age;

(b) "child in need of protection" means,

(i) a child who is brought, with the consent of the person in whose charge he is, before a judge to be dealt with under this Part,

(iii) a child where the person in whose charge he is cannot for any reason care properly for him, or where that person has died and there is no suitable person to care for the child,

(x) a child where the person in whose charge he is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for his health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or otherwise fails to protect the child adequately,

(xii) a child whose life, health and morals may be endangered by the conduct of the person in whose charge he is;

(c) "foster home" means a home, other than the home of his parent, in which a child is placed for care and supervision but not for the purposes of adoption;

(d) "judge" means a provincial judge presiding in a provincial court (family division);

(e) "parent" means a person who is under a legal duty to provide for a child, or a guardian or a person standing in loco parentis to a child, other than a person appointed for the purpose under this Act,....

(f) "place of safety" means a receiving home or foster home or an institution for the care and protection of children, and includes a hospital;

(2) Subject to subsection 8 of section 27, applications under this Part shall be heard by a judge presiding in a provincial court (family division) established for the county or district in which the child was taken into protective custody. R.S.O. 1970, c.64, s.20(2); 1975, c.1, s.12(5).

21. (1) A constable or other police officer, the Director, a local director or a person authorized by the Director or by a local director, who has reasonable and probable grounds to believe that any child is apparently in need of protection, may without warrant take the child to a

place of safety and detain the child there until the matter can be brought before a judge, or he may apply to a judge for an order requiring the person in whose charge the child is to produce the child before a judge at the time and place named in the order. R.S.O. 1970, c.64, s.21; 1975, c.1, s.13(1).

(2) Where a person authorized under subsection 1 has reasonable and probable grounds to believe that a child apparently in need of protection is on any premises, he may without warrant enter the premises, if need be by force, and without warrant search for and remove the child from the premises.

22. (1) If it appears to a justice of the peace, on information laid before him on oath,

(a) that there is reasonable cause to suspect that a child is in need or protection; or

(b) that a child has unlawfully departed or has been unlawfully removed from the care or custody of a children's aid society,

the justice may issue a warrant authorizing any person named therein to search for the child and to take him to and detain him in a place of safety. R.S.O. 1970, c.64, s.22(1); 1972, c.109, c.3; 1975, c.1, s.14.

(2) A person authorized by the warrant may enter, if need be by force, any house, building or other place specified in the warrant and may remove the child therefrom.

(3) It is not necessary in an information or warrant under this section to describe the child by name. R.S.O. 1970, c.64, s.22(2, 3).

23a. (1) In this section, "parent" means a person who is under a legal duty to provide for a child, or a guardian, or a person standing in loco parentis tó a child other than a person appointed for the purpose under this Act.

(2) Subject to the approval of the children's aid society having jurisdiction in the area

where the parent resides, or the Minister, a parent,

(a) who through circumstances of a temporary nature is unable to make adequate provision for his child; or

(b) who is unable to provide the services required by his child because of the special needs of the child,

may voluntarily place the child into the care, custody or under the supervision of the society or of the Crown, as the case may be.

(3) Where a society or the Minister agrees to receive a child into the care, custody or under the supervision of the society or of the Crown, as the case may be, with the consent or at the request of a parent of the child and without an order under this Part respecting the care, custody or supervision of the child, the society or the Minister, as the case may be, shall enter into a written agreement with the parent or parents for the care, custody or supervision of the child for such period of time, subject to subsections 4 and 6, as may be agreed between the parties to the agreement.

(4) An agreement entered into pursuant to subsection 3 in respect of a child referred to in clause (a) of subsection 2, shall be for a period not exceeding twelve months provided that the parent or parents and the society where the Director approves or the parent or parents and the Crown, as the case may be, may from time to time agree, subject to subsection 6, to extend the agreement for a further period or periods of time, that shall not exceed an aggregate of twelve months, and may agree to vary any other term or condition thereof not prescribed by the regulations.

(6) Any party to an agreement made under this section, at any time during the period of the agreement or any extension thereof, upon giving at least fifteen days notice in writing to the other party or parties, as the case may be, may terminate the agreement.

24. (1) As soon as is practicable and within five days of detaining a child in a place of safety under section 21 or clause (a) of subsection 1 of section 22, or of assuming the care of a child under section 22a, as the case may be,

(a) the matter shall be brought before a judge to determine whether the child is a child in need or protection; or

(b) the child shall be returned to the parent or person in whose charge he was immediately prior to his apprehension or to the assumption of his care, as the case may be.

(2) Subsection 1 does not apply to a child in the care, custody or under the supervision of a children's aid society pursuant to an agreement entered into under section 23a. 1975, c.1, s.16.

25. (1) Where an application is made to a judge respecting a child apparently in need of protection, there shall be a hearing to determine whether or not the child is in need of protection, and where the judge finds that the child is in need of protection, the judge shall also determine the child's age, name, the location where the child was taken into protection and, subject to section 37, the religious faith of the child. 1975, c.1, s.17(1).

(2) The judge or a justice of the peace has the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as may be requisite, and the judge has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and things as is vested in any court in civil cases. R.S.O. 1970, c.64, s.25(2); 1975, c.1, s.17(2).

(3) The judge may hear any person on behalf of the child, the local director of the children's aid society or any person authorized by the board of directors of the society on behalf of the society, the clerk of a municipality or any person authorized by the council of the municipality on behalf of the municipality, and a

regional welfare administrator of the Ministry of Community and Social Services or any person authorized by the Minister on behalf of Ontario. R.S.O. 1970, c.64, s.25(3); 1972, c.1, s.19(3).

(10) Where a hearing is adjourned, a judge shall make such order for the temporary care and custody of the child as he thinks advisable. R.S.O. 1970, c.64, s.25(10); 1973, c.75, s.1.

(11) The provisions of this section apply mutatis mutandis to proceedings under subsection 5 of section 27, section 31 and subsection 1 of section 32. 1972, c.109, s.4(2).

26. (1) Where a judge finds the child to be a child in need of protection, he shall make an order,

(a) that the child be placed with or returned to his parent or other person subject to supervision by the children's aid society for a period of not less than six months and not more than twelve months as in the circumstances of the case he considers advisable; or

(b) that the child be made a ward of and committed to the care and custody of the children's aid society having jurisdiction in the area in which the child was taken into the protective care of the society for such period, not exceeding twelve months, as in the circumstances of the case he considers advisable; or

(c) that the child be made a ward of the Crown until the wardship is terminated under section 32 or 35 and that the child be committed to the care of the children's aid society having jurisdiction in the area in which the child was taken into the protective care of the society. R.S.O. 1970, c.64, s.26; 1973, c.75, s.2.

29. A judge may, in any case arising under this Part, make such order as he considers proper regarding the right of access to the child by any person or by either parent of the child,

having regard to the welfare of the child, the conduct of the person or parent and the wishes of the parents, and may at any time alter, vary or discharge any order so made. R.S.O. 1970, c.64, s.29.

30. Every order made under this Part shall contain a statement of the facts upon which the decision of the judge is based. R.S.O. 1970, c.64, s.30.

31. (1) Where a child has been committed as a ward of a children's aid society, the society may at any time and shall, before the expiration of the period of wardship other than under section 35, apply to a judge for further consideration, and the judge shall thereupon further inquire and determine whether the circumstances justify a further order under section 26, and may make such further order or terminate the existing order, but in no case shall an order be made that results in the child being a ward of the society for a continuous period of more than twenty-four months. R.S.O. 1970, c.64, s.31; 1973, c.75, s.4.

(2) Where a child is a ward of the children's aid society, a parent of the child may, after the expiration of six months from the last order made under clause (b) of subsection 1 of section 26, and upon giving notice to the society, apply to a judge for termination of the order and,

(a) where the judge is satisfied that the termination is in the best intersts of the child, he may terminate the order; or

(b) the judge may make such further order under this Part as he deems necessary in the interest of the welfare of the child, but in no case shall an order be made that results in the child being a ward of the society for a continuous period of more than twenty-four months. 1975, c.1, s.20.

38. (1) A ward of the Crown or of a children's aid society may be placed by the society for any period of time in a foster home or other suitable place according to the needs of the child,

and every ward so placed shall receive an education in accordance with the laws of Ontario and in keeping with his intellectual capacity, and provision for his occupational training and for his total development shall be such as a good parent would make for his own child.

(2) A ward of the Crown or of a children's aid society who has been so placed may at any time be removed by the society when, in the opinion of the Director or the local director, the welfare of the ward so requires.

40. (1) Any person having the care, custody, control or charge of a child who abandons, deserts or fails to support the child or inflicts cruelty or ill-treatment upon the child not constituting an assault or otherwise fails to protect the child is guilty of an offence and on summary conviction before a judge is liable to a fine of not more than $500 or to imprisonment for a term of not more than one year, or to both.

(3) The judge may in connection with any case arising under subsection 1 or 2 hold a hearing in respect of any child concerned and may proceed as though the child had been brought before him as a child apparently in need of protection. R.S.O. 1970, c.64, s.40.

41. (1) Every person having information of the abandonment, desertion, physical ill-treatment or need of protection of a child shall report the information to a children's aid society or Crown attorney.

(2) Subsection 1 applies notwithstanding that the information is confidential or privileged, and no action shall be instituted against the informant unless the giving of the information is done maliciously or without reasonable and probable cause. R.S.O. 1970, c.64, s.41.

REGULATION 86
GENERAL
INTERPRETATION

1. In this Regulation,

(b) "child in care" means a person under the age of eighteen who is in the care of a society in a place other than the home of his parent pursuant to an order made under clause (b) or (c) of subsection 1 of section 26 of the Act or pursuant to an agreement under section 23a of the Act and includes a former Crown ward who has attained the age of eighteen years and is under twenty-one years of age who is receiving care and maintenance from a society pursuant to section 35 of the Act;

(d) "recognized school of social work" means,

- (i) a school of social work that is a member of the National Committee of Canadian Schools of Social work of the Association of Universities and Colleges of Canada, and
- (ii) any graduate school of social work outside of Canada having, in the opinion of the Minister, a course in social work at least equivalent to a course given at a school referred to in subclause (i);

(e) "social worker" means a person whose duties consist of investigating or supervising the care of children, whether in the care of a society or otherwise, providing guidance and counselling and who has the qualifications of a social worker set out in section 13 and includes a social worker supervisor. O. Reg. 320/71, s.1; O. Reg. 633/75, s.1.

4b. (1) Subject to subsection 2, where the actual costs of a society for any year are determined under the Act and this Regulation in accordance with Form 1, an adjustment may be made between the approved estimate for that year and the actual costs when so determined, and where approved by the Minister the amount of the adjustment shall either be paid to the society by Ontario and each municipality in the area in which the society has jursidiction or refunded by the society to Ontario and to the municipality, as the case may be, in the proportion to the respective financial obligations of Ontario and the municipality to the society in that year for such actual costs.

(2) The Minister, instead of approving the amount of the adjustment under subsection 1, may vary the amount of the adjustment and approve the amount as so varied, and thereafter subject to subsections 6 and 7, Ontario and each municipality in the area in which the society has jurisdiction shall pay to or have refunded by the society, as the case may be, their respective portions of the amount as so varied.

(3) After the estimate of net expenditures of a society has been finally approved by the Minister under section 9 or 11 of the Act, the society may at any time during the balance of the year, file with the Director and with each municipality in the area in which the society has jurisdiction,

(a) an amendment to the approved estimate; or

(b) a supplementary estimate,

of net expenditures of the society for the year, not included in the original approved estimate, and, subject to subsection 7, the municipality or supplementary estimate, as the case may be, within sixty days after the receipt thereof.

(4) Where the municipality and the Minister approve the amount of the amendment to the approved estimate or the amount of the supplementary estimate submitted under subsection 3, the amount shall be deemed to be part of the approved estimate of the society for that year for the purpose of determining the amounts payable to the society under section 12 of the Act and section 4a.

(5) After the amendment to the approved estimate or the amount of the supplementary estimate has

been filed with the Director and approved by the council of each municipality under subsection 3, the Minister may approve the amendment or the supplementary estimate or he may, subject to subsection 6, vary the amount of the amendment or the supplementary estimate and approve the amount as so varied.

(6) Where the Minister intends,

(a) to refuse to approve the payment of an adjustment made under subsection 1 or the amount of the amendment to the approved estimate or the amount of a supplementary estimate under subsection 3; or

(b) to vary the amount of the adjustment under subsection 1 or the amount of the amendment to the approved estimate or the amount of a supplementary estimate under subsection 3, and approve any such amount as so varied,

he shall, at least thirty days prior to the refusal or approval, as the case may be, give notice of his intention to the society and to the council of each municipality in the area in which the society has jurisdiction.

(7) Where the children's aid society or the council of any municipality in the area in which the society has jurisdiction does not agree with the Minister's intention,

(a) to refuse to approve the payment of an adjustment made under subsection 1 or the amount of an amendment to the approved estimate or the amount of the society's supplementary estimate made under subsection 3; or

(b) to vary the amount of the adjustment or the amount of the amendment to the approved estimate or the amount of the supplementary estimate,

any one of them may, before the Minister's refusal or approval is given, as the case may be, request the Minister to refer the matter to a child welfare review committee and thereafter the provisions of section 11 of the Act apply mutatis mutandis to a request for review made under this subsection.

10b. For the purposes of sections 17 and 23a of the Act, special needs of children are needs related to or created by physical, mental, emotional, behavioural or other handicaps of children. O. Reg. 633/75, s.6, part.

11. The local director of a children's aid society shall have attained the age of at least thirty years or otherwise have demonstrated unusual maturity and,

(a) shall have successfully completed two years of professional education in social work at a recognized school of social work and have had at least three years experience as a social work practitioner in child welfare;

(b) shall have educational qualifications that together with his experience in social work are, in the opinion of the Minister, suitable for the position; or

(c) held the appointment of local director on the 1st day of June, 1966. R.R.O. 1970, Reg. 86, s.11.

12. Every children's aid society shall employ adequate supervisory staff for its social workers and a social work supervisor shall have,

(a) the qualifications of a social worker III, IV or V but shall have had at least three years experience as a social work practitioner in child welfare; or

(b) such other educational and personal qualifications together with progressive experience in social work practice as, in the opinion of the local director, constitute adequate and suitable preparation for supervisory duties. R.R.O. 1970, Reg. 86, s.12.

13. (1) Every children's aid society shall classify its social workers according to the following classifications:

1. Social Work Assistant, being a person who,

(a) has successfully completed Grade 13 in Ontario or its equivalent as determined by the Minister; or

(b) was actively engaged as a social worker in a children's aid society for a period of at least one year immediately before the 1st day of January, 1966.

2. Social Worker I, being a person who,

(a) holds a Bachelor of Arts degree from a university in Ontario preferably with a major emphasis in social science, or holds a certificate in welfare from an institution of post-secondary school education in Canada at least equivalent to the course at Ryerson Polytechnical Institute leading to a Certificate in Welfare; or

(b) has other educational qualifications as the Minister considers equivalent thereto and at least two years of experience in welfare work.

3. Social Worker II, being a person who,

(a) has successfully completed one year of full-time study in social work at a recognized school of social work and, where the recognized school of social work is outside Canada or the United States of America, has had at least one year of experience as a social worker in Canada; or

(b) has had at least three years of progressively responsible experience in welfare work in Ontario with the qualifications of a Social Work Assistant or two years of such experience with the qualifications of a Social Worker I.

4. Social Worker III, being a person who,

(a) has successfully completed a two years course of professional education in social work at a recognized school of social work in Canada or the United States of America;

(b) has successfully completed one year of full-time study in social work at a recognized school of social work in Canada or the United States of America and, after the study, has had at least two years of experience in social work;

(c) holds a letter of recognition from the Central Training Council in Child Care of the Home Office Children's Department in Great Britain and, after its issuance, has had at least one year of experience in social work; or

(d) has successfully completed a course of professional education in social work at a recognized school of social work in a country other than Canada or the United States of America and has had at least three years of experience in social work in Canada.

5. Social Worker IV, being a person who,

(a) has successfully completed a two years course of professional education in social work at a recognized school of social work in Canada or the United States of America and, after graduation, has had at least three years of experience in child care or family welfare services;

(b) holds a letter of recognition from the Central Training Council in Child Care of the Home Office Children's Department in Great Britain and, after its issuance, has had at least four years of experience in child care or family welfare services; or

(c) has successfully completed a two years course of professional education in social work at a recognized school of social work outside Canada or the United States of America and, after graduation, has had at least five years of experience in child care or family welfare services.

6. Social Worker V, being a person who,

(a) has successfully completed a two years course of professional education in social work at a recognized school of social work in Canada or the United States of America and, after graduation, has had at least five years of experience in social work of which at least two have been in child care or family welfare services;

(b) holds a letter of recognition from the Central Training Council in Child Care of the Home Office Children's Department in Great Britain and, after its issuance, has had at least six years of experience in social work of which at least two have been in child care or family welfare services; or

(c) has successfully completed a two years course of professional education in social work at a recognized school of social work outside Canada or the United States of America and, after graduation, has had at least seven years of experience in social work of which at least three have been in child care or family welfare services.

(2) No person shall be classified in a classification under subsection 1 unless, in the opinion of the local director, he is of a character and temperament suited to the work of a social worker. R.R.O. 1970, Reg. 86, s.13.

14. (1) Every children's aid society shall record any complaint respecting children in need of protection within twenty-four hours of its receipt.

(2) Within twenty-one days after a complaint is recorded, the society shall investigate the complaint and record a report of determining whether or not the child is in need of

protection and, if so, including a tentative plan for the welfare of the child and the steps taken to implement the plan and, where the child is not taken into protective care, the case shall be reviewed not later than sixty days after the complaint was recorded. R.R.O. 1970, Reg. 86, s.14.

15. (1) Every society shall, within sixty days after the admission of a child to the care of the society, prepare and record a plan for the care, treatment and progress of the child while in the care of the society and shall review and, if necessary, amend the plan every three months thereafter.

(2) Each child's educational progress and social adjustment shall be assessed and recorded annually. R.R.O. 1970, Reg. 86, s.15.

16. (1) Every child in care shall be medically and dentally examined as soon as is practicable after the admission of the child to care, and thereafter shall be medically and dentally examined at intervals of not more than one year.

(2) A report of each medical and dental examination shall be recorded and any treatments recommended in the report shall be carried out within the times recommended therein.

(3) Where necessary and available, psychological and psychiatric assessments and treatments shall be provided and recorded for any child in care in accordance with his needs. R.R.O. 1970, Reg. 86, s.16.

17. Where it is in the best interest of a child in care, the society shall maintain the child's relationship with his family. R.R.O. 1970, Reg. 86, s.17.

18. (1) Every child admitted to the care of a society shall be placed in a foster home or in another home in keeping with his needs.

29. (1) An order under subsection 10 of section 25 of the Act shall be in Form 11. O. Reg. 633/75, s.10.

(2) An order under clause (a) of subsection 1 of section 26 or subsection 5 of section 27 of the Act shall be in Form 12.

(3) An order under clause (b) of subsection 1 of section 26 of the Act or in respect of a ward of a children's aid society under section 27 of the Act shall be in Form 13. R.R.O. 1970, Reg. 86, s.29(1-3).

(4) An order under clause (c) of subsection 1 of section 26 of the Act or in respect of a Crown ward under section 27, 32 or 35 of the Act shall be in Form 14. O. Reg. 320/71, s.7.

30. The judge shall cause to be transmitted a certified copy of each order made in Form 11, 12, 13 or 14 to,

(a) the person, children's aid society, institution or home that applied for the order; and

(b) each person required by the Act to be given notice of the hearing. R.R.O. 1970, Reg. 86, s.30; O. Reg. 320/71, s.8.

31. The judge shall cause to be transmitted to the Director a certified copy of each order made under clause (c) of section 26 of the Act or under subsection 1 of section 32 of the Act. R.R.O. 1970, Reg. 86, s.31.

SCHEDULE 2-C

Extracts from The Crown Attorneys Act, R.S.O. 1970, Chapter 101 as amended

Appointment

1. -(1) The Lieutenant Governor in Council may appoint a Crown attorney for each county and for each provisional judicial district and such Crown attorneys and assistant Crown attorneys for the Province as he considers necessary. R.S.O. 1960, c.82, s.1; 1964, c.15, s.1(1).

Special Crown attorneys

(2) The Crown attorneys and assistant Crown attorneys appointed for the Province or a county or provisional judicial district thereof shall act anywhere in the Province as directed by the Deputy Attorney General. 1964, c.15, s.1(2); 1967, c.18, s.1.

Assistant Crown attorneys

2. The Lieutenant Governor in Council may appoint one or more assistant Crown attorneys for any county or provisional judicial district who shall act under the direction of the Crown attorney and when so acting has the like powers and shall perform the like duties as the Crown attorney. R.S.O. 1960, c.82, s.2.

Duties:

12. The Crown attorney shall aid in the local administration of justice and perform the duties that are assigned to Crown attorneys under the laws in force in Ontario, and, without restricting the generality of the foregoing, every Crown attorney shall,

to examine information etc.

(a) examine informations, examinations, depositions, recognizances, inquisitions and papers connected with offences against the laws in force in Ontario that the provincial judges, justices of the peace and coroners are required to transmit to him, and, where necessary, cause such charges to be further investigated, and additional evidence to be collected, and sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions may not be delayed unnecessarily or fail through want of proof;

to conduct prosecutions

(b) conduct, on the part of the Crown, preliminary hearings of indictable offences and prosecutions for indictable offences,

(i) at the sittings of the Supreme Court where no law officer of the Crown or other counsel has been appointed by the Minister of Justice and Attorney General,

(ii) at the court of general sessions of the peace,

(iii) at the county or district court judges' criminal court, and

1953-54 c.51(Can.)

(iv) before provincial judges in summary trials of indictable offences under the Criminal Code (Canada)

in the same manner as the law officers of the Crown conduct similar prosecutions at the sittings of the Supreme Court, and with the like rights and privileges, and attend to all criminal business at such courts;

cases brought by private prosecutors

(d) watch over cases conducted by private prosecutors and, without unnecessarily interfering with private individuals who wish in such cases to prosecute, assume wholly the conduct of the case where justice towards the accused seems to demand his interposition;

summary conviction matters

(e) where in his opinion the public interest so requires conduct proceedings in respect of any offence punishable on summary conviction;

SCHEDULE 2-D

CROWN COUNSEL BRIEF

CONFIDENTIAL

First appearance date .. October 30, 1975
Summons ....
Custody ....
Bail ....
Indicated plea ....

PARTICULARS OF ACCUSED:

	NAME	AGE	ADDRESS
1.	(sic) Jennifer Angelle Popen	19	287 Devine St., Sarnia
2.	Annals Ambrose Popen	36	287 Devine St., Sarnia
3.			

ALL CHARGES: Give substance and Section Nos.

Sec. 40(1), Chapter 64 Child Welfare Act, Revised Statues of Ontario

PARTICULARS OF OCCURRENCE: Date ______ Time ______

Place Sarnia, Ont.

COMPLAINANT:Name Kim Anne Marie Popen Address:287 Devine St.Sarnia

General description of property to which charge relates and value of damage where relevant ______

ALL WITNESSES, INCLUDING POLICE OFFICERS:
Give name, address. Include age.

Name	Address	Age	Subpoenaed
Mrs. Dick	Children's Aid Society		
Mr. Harold Carter	Children's Aid Society		
Nurse Betty Hewitt	St. Joseph's Hospital		
Dr. K.R. Singh	Sarnia Medical Arts Building		
Dr. Jumean	145 Wellington St.		
P.C. Turner	Sarnia Police Dept.		
P.C. Wyville	Sarnia Police Dept.		
Miss Cappa	St. Joseph's Record's		

Officer in charge of case and responsible for preparation of this report:

P.C. Wyville Date report prepared October 23, 1975

Counsel for accused

EVIDENCE

(A synopsis to be followed by a concise statement of what each witness will state:
(attach all witness' statements)

1. On August 31, 1975 at 3:10 p.m., P.C. Wyville attended a call to the Children's Ward of St. Joseph's Hospital in regards to a battered child. At the hospital he spoke with the doctors and nurses about Kim Popen, age 7 months and was led to believed (sic) from these persons, that this child had received injuries that showed she had been beaten.

While at the hospital, he viewed the child and saw that she was bruised on both arms, both ankles and one cheek and had a cut lip. Further investigation showed the following medical history of this child:

(a) Born January 11, 1975
(b) Admitted to St. Jospeh's (sic) Hospital with a fractured left arm on March 22, 1975.
(c) Admitted again with black eyes on April 22, 1975.
(d) Admitted on August 31, 1975 with fracture to one arm, swelling and bruising of both elbows, both ankles and left cheek and the left upper lip was slightly cracked and bleeding.

2. Mrs. Dick will say that she was called to St. Joseph's Hospital on August 31, 1975 and saw the marks on the child and spoke with Mr. and Mrs. Popen. She had the child signed over to the Children's Aid Society at that time.

3. Mr. Carter will say that he is looking after the Popen case and has talked with both parents. He can also give past history and involvement with the Popens.

4. Nurse Betty Hewitt will say that she saw the child on August 31, 1975 and can verify the marks on the child. She had also seen the child with similar marks in the past.

5. Dr. Singh will say that he examined Kim Popen on August 31, 1975 and at this time he found slight swelling and bruising of the left and right elbows, bruises on both ankles and a bruised left cheek and cut lip. He can also say that he has seen this child on March 27, 1975 when the child was 2 months old and at this time her left arm was fractured. He can say that in his opinion the child is battered.

6. Dr. Jumean will say that he has seen the child on numerous occasions. On June 16/75 the child was brought to his office with a cut lip and severe bruises over her face, neck and buttocks. Approximately 6 weeks prior to this, the child was hospitalized with a broken arm. Approximately 3 weeks prior to the child being brought to his office, she was checked by him at the hospital for a respiratory ailment and at that time he observed she had a black eye. On June 16, 1975 he can say he reported to the police that he believed the child was battered.

7. P.C. Turner will say that he was called to St. Joseph's Hospital on August 31, 1975 to take pictures of Kim Popen.

8. P.C. Wyville will say the same as the above synopsis.

THE QUEEN

vs.

(sic)

.............Mrs. Jennifer Angelle Popen.............

.............Mr. Annals Ambrose Popen...............

....

....

....

Charges:
(Description and Section Nos.)

1. Chapt. 64, Sec. 40(1) Child Welfare Act Revised Statutes of Ontario
2. ....
3. ....
4. ....
5. ....
6. ....

To appear in...........#3...........Provincial Court
(Court No. where more than one court in area)

Arrest Warrant Summons

Date of Arrest..
Occurrence No...
Officer i/e case...........P.C. Wyville...............
Div. or Unit...............Morality...................

CROWN COUNSEL BRIEF

CONFIDENTIAL

SCHEDULE 2-E

History of the Children's Aid Society involvement with the Popen family (Removed from the Family Services File)

JUNE 17/75
REFERRAL
AD/mh

Detective Gander came to the office regarding an infant (Kim) six months of age and possibly abused. Police received an anonymous call last night to the effect that the infant has multiple bruises over the face and neck. Allegedly over the last six weeks the infant has had a broken arm on one occasion and on another a black eye when admitted to hospital for other causes. Detective Gander was desiring an Agency worker's company and assistance should or when admission is gained and access to the child is made via permission or warrant. S. Saul and case aide W. Hoad (R.N.) accompanied Detective Gander to the address in search of the infant.

JUNE 17/75
SS/mh

Win Hoad and I accompanied Detective Gander to 240 Devine Street to investigate a possible abuse charge. No-one was at home at this address and while speaking to a neighbour it was perceived that the family didn't live there any longer. Upon further investigation, it was determined that baby Kim was staying with her Aunt, Mrs. Cecil Popen of 548 Devine.

We visited Mrs. C. Popen's home and she showed us the marks on the child. She said they were approximately two weeks old and the marks were very faded and would not have been noticable if Mrs. C. Popen had not pointed them out. The child was quiet and contented while her Aunt handled her. The child had a cut on her lip and tongue which Mrs. Popen stated had been caused by the child's mother who had been forcing the child to eat.

Jennifer Popen arrived shortly thereafter to take her child, for she had heard that the Children's Aid was checking up on her. She rushed in, grabbed the baby and started to hustle her out the door until Detective Gander stopped her. She agreed to sit down and talk, but she was extremely defensive and hostile. She denied having ever physically hurt her child and stated that she knew how to care for her children. In response to my question re any possible feeding problems, she answered positively that she was having problems, but refused to accept help of any sort when I offered to have a L.H.U. nurse give her a hand.

Her husband, Annals, known as Kerri, was also there and agreed with his wife that the child was receiving good care etc. However, he let Jennifer do the talking for him and he did not try to disagree with her for she verbally struck out at him.

We stayed until Jennifer had given Kim a bottle and I was amazed at how upset the child was when Jennifer held her and in particular, prepared to feed her. I told Jennifer that C.A.S. would be around to see her in a week or so, but she was not pleased about this. I believe it would be advisable to take a L.H.U. nurse and introduce her whether Jennifer wants one or not. As well this defensive hostile young mother should be closely supervised considering the history of the recent six weeks.

Jennifer Popen - 18 years (quite immature) - hostile, defensive.

Dr. Jumean - family physician - 337-3729.

Annals Popen 30 ish in age, meek, bows down to wife's hostility, is said to drink heavily, is on strike at present.

JUNE 19/75
MTH/mh

This case was due for assignment to H.R.C. for service including Public Health nurses. There was serious concern that the mother might take off to Jamaica with the child in view of the way she had been observed handling her. There was apparently a misunderstanding about the opening of the case at that time.

AUG. 29/75

H.R.C. had talked with Detective Gander, City Police, re a home visit and was told that the current situation with police and parents was most "volatile" and we should hold off. He would send an occurrence report and also keep the home under surveillance and report back. No report was received.

AUG. 31/75
REFERRAL

Dr. Jumean was the family doctor - the child was observed with black eye out at the Mall - reported to Dr. Jumean who promptly visited the mother. The outcome not known, but the mother does not want Dr. Jumean seeing child now. Kim is supposed to have climbed out of crib and fallen, mother claims Kim can sit, crawl and pull herself up over and out of the crib.

Mrs. Popen took Kim to the Sarnia General Hospital where she saw a doctor Haig. He told her to come back on the 30th for X-Rays etc. She didn't and she took the child to St. Josephs Hospital, where the child was admitted about 1:30 a.m. (technically Aug. 31st).

About 3:15 today the mother came to take the child home - the police were called and C.A.S. Apparently Drs. Thorpe and Singh both examined the child and concur that the bruising is most difficult to explain from falling or bumping and strongly indicate having been inflicted, by some person or persons. X-Rays revealed the chip in the elbow, said by the doctors to also be a most unusual injury to former broken arm - healed and sound. This break is in the other arm.

Non-Ward care was reluctantly consented to by the parents - the father does not want a repeat of today - he recognises no-one wants a repeat of child injury. The consents were given on the recognition that no-one could remove the child from hospital without C.A.S. consent, with the exception of C.A.S., and that if the baby were discharged it's return home depended on the results and findings of police investigation as well as C.A.S. assessment as to the infant's safety if or when returned.

AUG. 31/75 Case opened to H.R. Carter.

Call received from Constable Wyeville, (sic) City Police, to attend at St. Josephs Hospital where the child Kim was presently with bruising to both arms at the elbows and both ankles. Abuse was strongly suspected by staff doctors and police. The mother was there trying to have the child released.

On arrival, Mrs. Popen was found to be declaring that eight months old Kim had pulled herself up out of her crib onto the dresser where she fell and was found by the mother on the floor. Mr. Popen had been sent for by her, to verify her story.

Both parents state vehemently that if someone is mistreating their child, it is not them. Mr. Popen repeatedly declared that no-one was taking his child away from him - he did not mistreat it. He finally realized his wife had come to the hospital to get the child against what he'd told her. At this time it was learned that the child had broken (chipped) bone in the elbow. The parents agreed to Non-Ward care while treatment of the child was provided and police investigations were in progress.

There is a history of previous seemingly unclarified situations re this child. e.g. two months of age - child in hospital with fractured arm bone (upper) - explanation "child fell out of walker," sitter blamed for abuse - sitter returned to Jamaica. Mother now says false abuse, child only fell.

SEPT.1/75-
FEB. 29/76
HRC/mh

Kim was released from St. Josephs Hospital and is directly under child care worker Mrs. Mary Kirby (see child care file # 9563). Appointment visits of both parents to the child at the agency are arranged and carried out under Mrs. Kirby's supervision. Mr. Ian Harvey, the Popen's solicitor, wrote to us requesting more frequent visits by letter dated November 18th 1975 (on file).

MEDICAL DATA:

Medical data was received September 8th 1975 and October 22nd 1975. This relates to facts of hospitalization of Kim at St. Josephs Hospital on March 22nd 1975, April 22nd 1975 and the more recent August 31st 1975. The details of this and discharge summary of Dr. K.R. Singh are on file and self-explanatory.

COURT ACTION:

The initial Court Hearing for September 8th 1975 was adjourned to October 29th 1975 10.00 a.m. Oct. 29th/75 adjourned to January 19th 1976. January 19th 1976 adjourned to February 25th 1976. Criminal charges were laid under the Child Welfare Act, and were held October 30th/75, adjourned to November 13th/75, adjourned to January 19/76, adjourned to February 23rd/76 at 10.00 a.m. The disposition of the criminal charges were that Mr. Popen admitted guilt and sentencing regarding this will be handed down March 29/76.

At Family Court February 25th/76, an order of six months Society Wardship was given plus the proviso that Mr. Popen obtain psychiatric help and both parents attended (sic) the Parent Education Course at Lambton College and care of weekly supervision in their home by C.A.S. and all future visits of Kim to them shall be in their home under the C.A.S. worker's supervision.

Results of these visits to be reported to the Supervisor, Mrs. Harvey weekly. Witnesses on our behalf giving evidence were Mrs. Betty Hewitt, R.N. St. Josephs Hospital, resident # 344-0930; Mrs. Jean Cappa, Director of Medical Records, St. Josephs Hospital 336-6121; Dr. D. Singh - 336-6311; Mrs. A. Dick and Mrs. M. Kirby, C.A.S. staff; Constable Barry Wyville, Sarnia City Police (Morality) 337-2111. Mr. Harvey and Mr. Higgins, solicitors, 337-3278, attended on behalf of the Popen's. Following the results of today's Court Hearing all witnesses were contacted and advised and thanked sincerely for the mountainous effort they had given on behalf of this case.

With regard to worker/client case relationships, case goals etc. this was legally restricted by the Popen's lawyer and substantiated by a telephone call from Mr. Higgins to myself on January 16th 1976 at which time Mr. Higgins requested my help in changing a Court date. In trying to comply with his wishes I agreed I would be in touch with Mr. and Mrs.

Popen, to which Mr. Higgins replied "please, over my dead body you don't." Consequently, under these circumstances, but by obligation to give evidence of recent home situations it was necessary I request permission from Mr. Higgins office for the only two home visits which were January 16/76 and February 20/76. On both these occasions permission was granted but with the added instruction "don't quiz them."

The home visit of February 20/76 was necessary in that the Popen's (sic) had moved their residence and currently reside at 220 South Mitton Street 336-3799. This residence is owned by Mr. Doug Vandenberghe, 336-2473. This is a young person, initially stated by Mrs. Popen to be a cousin, and who was in fact in the previous home on the evening of Mr. Popen's admittance to throwing the shoes at the baby, striking the baby on the lips. Mr. Vandenberghe lives in the adjoining present residence of the Popen's (sic). Mr. Vandenberghe attended the Popen's (sic) in the initial visits to the child and was quite openly belligerent toward myself and Mrs. Kirby.

Mr. Popen is said to have changed jobs recently and has not attended the visits to his daughter for the two previous occasions. Prior to this he has diligently visited with his wife approximately every two weeks when visits have been of a half-hour duration and on occasions I have been able to have casual conversation with them while in the office for this purpose.

PERSONAL OBSERVATIONS: I feel Mrs. Popen is a proverbial liar, apart from being a young, inexperienced 18 year old mother of two children and presently in the advanced stages of pregnancy. She stated "I didn't want the others to know" (meaning the morality division) that a seven month old child had died while they were resident in Jamaica. The cause of this death was not stated and on questioning Mrs. Popen became her usual evasive self. Mr. Popen has admitted to drinking problems and has little or no conception of child raising, etc. Mr. Popen is aged 38 and has numerous extended families residing constantly and always within his own location. Mrs. Popen on the other hand, presents a rather isolated person, has stated she is not liked by her husband's family or the extended families by the name of Kameka, who are numerous in this area. Mrs. Popen stresses a great deal of confidence in Mr. Vandenberghe and he has attended all the Court Hearings with the Popen's (sic). My home visits to both residences, I have found it to be extremely neat and clean and would adequately meet Kim's needs. Following the Court Hearing on February 25th 1976, and during the following six months Society Wardship, and in consultation with my supervisor, this case will be transferred to Mrs. S. Lo as of February 29th 1976 and the child care file will remain with Mrs. M. Kirby.

FURTHER POINTS FOR CLARIFICATION: HRC/mh

Observation of Mrs. Popen's handling of her child; observation of Mrs. Popen's health during her pregnancy; she has stated to me on two occasions she has unaccountable blackouts, one out of the home and one in the home during which time the gas burners were on the stove and food was burnt. When this incident was remarked on in Mr. Popen's presence, it was found he was not aware of this and/or Mrs. Popen is lying again, since our initial acquaintance in September 1975 she has regularly alternated in the statement she was pregnant and wasn't pregnant, however observations now show she is quite evidently pregnant. Support and substantiate Mr. Popen's attendance for psychiatric treatment, A.A. involvement and in working with his Probation Officer, Mr. George Brower, 337-8891 (appointment with Mr. Brower February 25th/76, Mr. Brower did not attend or communicate with our office); to liaison between C.A.S. worker and Mr. Brower (sic) in all matters concerning ongoing situation. Prepare pre- sentence report at Mr. Brower's (sic) request. Arrange and assist enrollment of the Popen's (sic) in the Parent Education course at Lambton College.

Case transferred to Mrs. Lo. MTH

FEB. 27/76
SL/mh

I went to visit Mrs. Jennifer Popen at her home on marginal date. They had just moved to this two bedroom apartment on 220 S. Mitton Street two weeks ago. The Popen's had lived here before and had established a good relationship with the landlord and his family. Jennifer said they were like brother and sister to the Popens. The apartment was very nicely kept up. Jennifer offered to show me the bedrooms and kitchen. I had even checked the crib, it was quite sturdy. Everything looked fine.

Jennifer was very talkative today. She told me about her family in Jamaica. Her mother had 13 children from a number of different men. She was the third one. When she was about 14, one day she came home from school and found out her mother was gone. She had to quit school at Grade 9 to take care of her younger brothers and sisters. At that time the youngest one was only six months. She cared for the children by herself for almost two years until she got married in

1973. Her mother returned home before the wedding, and had been taking care of her own kids ever since.

Jennifer said her father was a very strict man. According to her mother, the man had left them when Jennifer was five. However, Jennifer later met him and visited him occasionally. She said even now when she thought of her father she was still afraid of him. She mentioned her husband's drinking problem and said since he joined A.A. three months ago, he had not had that problem since. It seemed that their landlord was a member of A.A. three years ago and gave Mr. Popen a lot of encouragement rejoining such association and getting help. Jennifer stated the reason for her husband's going was because he wanted their child, Kim, to come back. She also expressed her interest in going to the Parental Effectiveness Training Course.

ASSESSMENT: It has been only two years since Jennifer came from Jamaica to Canada. (Her husband has been here for 19 years already). She was brought up with a set of ideas and standards that were quite different from those of Canadians. With her experience taking care of younger brothers and sisters, she felt that she knew enough in regard to child rearing. Yet, she did not realize supplying food, clothing and lodging being only one aspect of child rearing. It also takes a lot of knowledge and technique to guide and discipline them. Besides this, she showed no bitter feelings towards her mother's irresponsibility. Instead, Jennifer felt she could get along fine with her mother, and her mother was the only one that Jennifer could trust her child with. This is beyond the worker's understanding at this moment.

PLAN: This is the first time that I, a new worker with this case, had a chance to visit with Mrs. Popen alone. I believe she wanted very much to impress me in a positive way, which is only fair. Nevertheless, I plan to visit them often to try to offer enough encouragement and understanding, and help them to keep up with their decisions.

MARCH 4/76
SL/mh

Jennifer again was neatly dressed and talkative today. She stated that she had never been real close to her mother because she was brought up by her grandmother until she was seven years old. She was never able to call her mother "Mom," but had always called her grandma by such name. Jennifer also said that her son was still alive and presently living with her grandmother. He is five years old now and calls her Aunt Jennifer. From the picture she showed me, it was very clear that the boy had a white father. When he was seven months old, Jennifer's mother refused to care for the child, therefore, Jennifer's grandmother had taken the boy and had reared him from then on. Kim was under foster care since September 1975. Mr. Popen had been wanting to have Jennifer's son come to their home to stay but Jennifer said her grandma loved the boy very dearly and she did not have the heart to take him away from her. When discussed about child beating she again stated no matter how frustrated she got, she could not hit a baby.

I believe now that Kim is under foster care and the tension is not there, Jennifer probably felt like what she said toward the child. Once Kim comes home to stay the situation will be different. It then will require close observation of the child and intensive moral support for the parents. I plan to see both Mr. and Mrs. Popen in our next interview and observe how they interrelate with each other.

MARCH 18/76
SL/mh

Both Mr. and Mrs. Popen were seen at their home this evening. They were told that the Parent Effectiveness Training Course will start on April 22nd, Thursday, 7-10 p.m. and Kim would not be returned home to live until we see how they respond to the course. They accepted this quite well. Jennifer mentioned that the child would start home visits one month after the court that is March 25th, 1976. However, they realized that such decision in regards to when home visits should start was left to C.A.S. by the Judge and Kim's visit will not take place until later. Both Mr. and Mrs. Popen were disappointed but decided to take it as they did. Jennifer also asked during Kim's home visits whether the worker or driver will stay in the house with the baby and herself. She felt she would need Kim's undivided attention. I told her for the first couple of times we will have to see how Kim responds at their home, but after the initial period, unless we feel it is necessary for us to be present during any specific visit, for example, visit when father is back home from work, the parents and the child will be left alone. When the question of Kim's being returned home to live before the new baby is due in July was brought up, they were told it depends on how they handle the child during the home visit and how well they and the child relate with one another. However, we agreed to make it a goal for all of us to work at for the time being. Mr. Popen watched the worker intensely for a while at the beginning of the session, then relaxed and started to answer questions. He talked about his A.A. meetings and said that stopping drinking did not bother him at all. He also put much emphasis on his love for Kim and said he would never abuse Kim any more. He had had a psychological assessment done and the result would be sent to the concerned personnel. Due to the fact that Mr. Popen no longer has drinking problems, we know Kim would come back shortly as well as a second child is on the way, the relationship between Mr. and Mrs. Popen tended to be relaxed. There was more respect from Jennifer to Mr. Popen; she still wanted to ask questions on their behalf but Mr. Popen did get a lot of chances to say what was on his mind. It seemed that with the present situation they both felt that it was worthwhile to work at their problems and both were looking forward to the future.

MARCH 29/76
SHIRLEY LO/md

The Popen's were in court on marginal date. Mr. Popen again pleaded guilty to the charge of neglecting to protect his child. Due to the positive results of psychiatry assessment, it would indicate that Mr. Popen was not in need of psychiatric treatment. Due to his involvement with A.A. and apparent intention to enroll in the Parent Effectiveness Training Course, Mr. Popen was put on probation and sentence was suspended for one year. However, if he violates his probation, he will face 6 months to 1 year in jail.

APRIL 1976

Kim has started her home visit on April 15th, 1976. Since then, Kim has visited her parents every Thursday. Visiting periods started from 1 and 1/2 to 2 hours. Twice Kim has had lunch at home. Both Mr. and Mrs. Popen were home during Kim's first visit. The worker was able to be there with them too. Both parents were very affectionate toward Kim. They were a bit uncomfortable and nervous due to the fact that I was there and hesitated to say "no" to some of Kim's requests. They introduced a lot of toys for her to play with and had a good time watching her. However, it did seem that sometimes the parents would give different instructions to Kim, for example, when Kim wanted to play with the little china ornaments on the table, one parent would say "yes" while the other one would say "no." Mr. and Mrs. Popen really need to go to the P.E.T. course to acquire enough knowledge on disciplining children.

SL/po Aside from Kim's home visits, this worker has been visiting their home at least once a week. The family situation keeps on progressing. At first, Mrs. Popen felt it was hard to turn down people's requests, for instance, one time she was asked to help one of her sisters-in-law to move. In spite of her own pregnant condition, and Mr. Popen's advice not to go, she went and exerted herself almost a little bit too far until she suddenly realized that she should not do so. Ever since then, she has learned to say no to her relatives and friends and felt much better to be able to say so. Mrs. Popen also felt much more comfortable with C.A.S. One time she volunteered to let the worker know her feelings about their former worker, Mr. Carter. She stated that she was very rude to Mr. Carter at first, yet he still sent them a card a Christmas, which made her realize that he was really trying to help and felt sorry for what she had done.

Mr. Popen has been going to A.A. meetings and stated that he felt so much better because he can control himself now. Mr. Popen seems to be a hard working man and is able to provide his family with things they need.

He stated that if it was not so hard to take time off work so frequently, he would like to be home every time during Kim's visits. We have spent time discussing background for parents who physically ill treated their children. Such incidents do not necessarily happen to parents who don't love their children. When parents have reached their limit, no matter how much love they have for their children, they usually resolve their frustration and anxiety by falling back on their own background - in this case, severe physical punishment. Mr. & Mrs. Popen beleive (sic) such a thing will not happen again since now they realize what caused it.

The Popens do not associate with their relatives that much any more. Neither do they have many friends outside the family. However, they are on very good terms with the Vanderbergs,(sic) and claim they have been able to learn a lot from this couple. The relationship between Mr. & Mrs. Popen has been steady over the months but I feel they will have to come to an agreement on their disciplinary measures and will have to learn more on giving support to each other.

The P.E.T. Course started on April 26th. The Popens enjoyed the course very much. They were fascinated by their teacher, Mr. Jim Stevens, and thought he was wonderful. At first, they said, they were a little shy but when Mr. Stevens started to talk they became very interested and forgot about their shyness. Mr. Popen has been having problems with his eyes and cannot read too long. They decided to take turns. Mr. Popen would read one page and Jennifer would read another. Mr. Popen also found it hard to write because he uses his left hand.

Nevertheless, they planned to either have him write his own answers slowly or give his answers to Jennifer for her to put down. They understand the only way for them to learn anything in this course is to answer their questions honestly and try to apply what they discuss in their class to their daily lives. Mrs. Popen felt most people had problems with teenagers than with younger children. They were encouraged to bring up their interests and questions with younger children in the class too.

MAY 6/76
SL/po

The Popen's second baby is due on July 6/76. The parents would like to have Kim returned home to live before the new baby is due. In this case they can have enough time with Kim before they get busy with a new baby. The home visits have been proven to be very disruptive to Kim. Her behaviour regressed every time after her visit at home. After a meeting held by Family Service supervisor, Mrs. Harvey, Adoption Supervisor, Mrs. Archer, Child Care worker, Mrs. Kirby and myself, it was decided that Kim should either be returned home as soon as possible, or home visits be stopped and Kim be returned after her parents are adjusted to the new baby. Since the home situation has been greatly improved and both parents are doing their best to get things out of the P.E.T. course, it is determined when the home visit be made before we decided which alternative between the two we are going to choose.

Both Mr. and Mrs. Popen were seen this evening. They were told how we feel towards their home situation. I let Mr. Popen know at the present time my main concern is with him. I felt he is moving toward the right direction but he needs to work harder because he is not quite there yet. They also were urged to apply to each other what they have learned at the P.E.T. course. We spent time discussing how important it is to be able to say no to others. They seemed to agree with this. Mr. Popen felt that he has improved a lot in this area but stated that he would try harder. They both realize that their family unit is the most important and nothing, not even relatives, should come between them. We discussed the importance of being honest to each other and to the worker. Their ability to help and support each other is emphasized again. We also talked about Kims (sic) temper and the patience and firmness it requires to cope with her. Kim will have to know who is the boss from the very beginning. They were asked to think about what we have discussed on that day. If there are more problems or questions, they should not hesitate to bring them up next time.

MAY 7/76
SL/po

Mrs. Kirby and I have decided to place Kim back home on May 27th. In the meantime no home visits will be made by Kim before this date.

SL/mw

Mrs. Popen was notified of our plan. She was glad that Kim was coming back. Jennifer said her husband helped her make beds, change bedsheets, etc. over the weekend. She used to do everything for him but doesn't do so anymore. (e.g. he will have to wash his own feet when coming back from work).

Jennifer also described her mother as a tight person who secretly puts her money away and asks people for more. Her mother used to scare them with ghosts so that they stayed indoors at night. Jennifer stated that she would never do such a thing to her own children.

MAY 31/76
SL/mw

Kim was returned home to live on May 27. Mr. Popen was not present at Kim's return but had taken the afternoon off. On marginal date a home visit was made. Jennifer said Kim was doing alright on weekends, eating good and sleeping well. Kim had thrown temper tantrums on several occasions when she could not get what she wanted. She would lie on the floor, cry and kick her feet. Jennifer tried to be firm with her telling her if mommy says no, it's no. Then Kim would quit crying, get up realizing that she couldn't get anything. Jennifer and I also discussed using simple terms explaining things to Kim when she was refused anything. As far as relatives interferring goes, the Popens should be firm and consistent with Kim and ignore other peoples (sic) gossip.

JUNE 1-16/76
SL/mw

During this period Mr. & Mrs. Popen and Kim are readjusting to each other. The overall situation is under control. Kim has been good most of the time and Mr. & Mrs. Popen are rather proud of her. However, Kim does have her good days and bad days. Sometimes she gets up in the morning in a wretched mood and would remain in that mood for the rest of the day or even a couple of days. Her parents then would try their best to cope with the situation. Kim has got a stomach flu near the end of June, together with the fact that she was teething, she became miserable. She could not eat too much and would be up several times at night. Jennifer was trying to be firm and patient with her and was rather exhausted when Kim recovered from the flu. In the meantime the second child's due date gets nearer every day and Jennifer was informed by Dr. Jumean that she had put on too much weight. Unless she watched her diet carefully she would probably have a hard time delivering the child, which scares Jennifer very much.

Jennifer now understands what our worker Mrs. Kirby told her about Kim who when she is mad will hurt herself and destroy things. Jennifer has also seen Kim being mean to others and kicking younger babies or animals. She said she was glad she was informed of Kim's behaviour so that she knew what to look for and how to react when such behaviour occurred. Jennifer also mentioned that she's pleased with the fact that C.A.S. did get involved, although she felt that taking Kim away from them for nine months is rather too long. It was said that Mr. Popen still has mixed feelings toward C.A.S. He was able to see that our taking Kim into care helped him make a decision as to quit drinking. Yet, he was not happy with the fact that we've had Kim for so long.

Jennifer also mentioned the way their lawyer, Mr. Higgins, worked with them and how they were told not to say anything. They finally got fed up and began to wonder whether the lawyer really wanted to help them with their problems or just to win the case. She indicated that they were rather relieved when six months society wardship was granted and the court was over.

JUNE 17 -
JULY 6/76
SL/mw

Jennifer felt that Kim is playing her trick of one parent against the other again. Sometimes Kim would be very hard to discipline in the daytime but when Mr. Popen came home from work she would become such a sweet little girl that Mr. Popen could not believe what Jennifer had told him about Kim. Since Kim was an active child, she often bumped into things and hurt herself. Mr. Popen was not happy about it and thought Jennifer should watch her more carefully. He said he did not mind if supper was not ready when he was home from work but Jennifer should see to it that Kim did not get hurt. He was afraid that C.A.S. was going to take Kim again.

Several days later I was able to confront Mr. Popen with this, and reassure him that we fully understood children did get hurt accidentally, but he should be practical and realize that Mrs. Popen could not keep her eyes on Kim all the time. We also discussed Kim's changing moods and her behaviour. Mr. Popen said a couple of days ago Jennifer went out with her girlfriend for a whole day and left Kim with him. He was then able to see with his own eyes what Jennifer meant about Kim. He realized that being firm, yet loving was the only way to deal with her.

On July 6/76 the Popens(sic) second child, Karie was born.

JULY 7-23/76
SL/mw

Jennifer stayed in the hospital for a week with the baby. During this period she hired a babysitter to care for Kim during the day. A visit was attempted to see if the babysitter could cope with Kim, however no one was home.

Home visits to the Popens has been frequent. For the last couple of times Jennifer appeared very tired, cold and distant to the worker. The baby was healthy and had already begun to have baby cereal, but Kim was rather spoiled by the babysitter and wanted only cookies but not food. Jennifer tried to cope with that by reducing the cookie intake gradually. Mr. Popen doesn't feel too good lately due to his bad back, but Mr. Popen usually will cook on weekends and relieve Jennifer of some housework duties. We have discussed jealousy on the older child's part when there is a new baby at home and the importance of getting the older child involved.

Jennifer looked very unhappy but she was not able to share it with me as to what was bothering her. She also seemed to be living in fear that C.A.S. is waiting for another chance to take her child away. Jennifer was rather upset when asked if she detected any tendency on her husband's part to taking his frustrations out on the children. She said the past experience was enough to let him know that he should not do such things.

On my last visit we talked about Jennifer's fear towards C.A.S. Realizing that I was able to acknowledge her feelings, she honestly admitted it and we spent quite a while discussing the subject. It was indicated that C.A.S. is not asking for either a supervision order when Society wardship expires. I will be visiting on a friendly and supportive basis. She smiled, relaxed and said there is nothing wrong between her husband and herself as I had suspected earlier but she felt that C.A.S. has sent me out to spy on them. Jennifer also was upset because it seemed to her that since the new baby was born, everybody (probation officer, Mrs. Kate Maughan, and myself) has been asking her how her husband is and whether there is any tendency for him to go back drinking or abusing the children. Since this has been questioned so many times before and had done so much explaining they hated to do it again. They wanted the past in the past. We then discussed why people were being especially careful when the second child arrived. She seemed to be able to understand that with a new baby coming to the home, it is very easy to complicate the situation and create problems. It was pointed out again that right now is a crucial time and is very important to keep things under control.

Jennifer was loving towards Kim. Kim was smiling and singing most of the time and her eating habits have almost returned to normal. Jennifer has been giving Kim unsweetened cookies which Kim doesn't like and refuses to have. Neither does she ask for sweet cookies, knowing that her mother doesn't have them.

JULY 26/76 A call was made to the Popen's this morning in order to arrange a time for this worker to see them. It seemed that Jennifer Popen was trying to put me off. After I discussed the situation with my supervisor, we decided to apply for supervisory order before Society Wardship expires, due to the fact that Kim was a difficult child and a second child was born to this family and the home situation was not stable enough. Court date was arranged on August 4, 1976.

At 6:30 p.m. home visit was made to the Popens. Mr. Popen had not come back from work yet. Knowing that I was going to discuss something important, Jennifer had her friend Judy Vandenberghe there. She was very nervous and apprehensive. I explained to Jennifer the reasons we asked for a supervisory order and if things went on smoothly, there would not be any change in our original plan. We would only visit on a helpful and supportive basis. She was asked to discuss this with her husband.

JULY 27/76
SL/mw
Notices of Hearing were served to Mr. & Mrs. Popen today. Jennifer was more relaxed today, but she was barbequing

outside and did not spend much time with me. Mr. Popen said he understood why we would need a supervisory order and felt it was alright with them. Knowing we were going to ask for an adjournment on August 4, they decided not to go to the court and let me tell them what happened.

AUG 4/76
Sl/mw(sic)

Brief visit to the Popens. Jennifer was told the adjourned date for the court. She said they were thinking of moving because she did not get along with her next door neighbour. During this period, Kim was sitting beside her mother quietly, watching T.V.

AUG 11/76
SL/mw

Early in the evening, a call was made by Mr. Popen's sister-in-law, Grace Popen, saying Kim had died of a fall from the patio. Jennifer wanted me to go over. In the meantime, another call was received from Sarnia Police requesting me to go to Sarnia General Hospital. At Sarnia General Emergency I identified the child to be Kim Popen. Later on, as the parents were talking to the detectives, a message was left for the Popen's (sic) to call me again if they needed me.

AUG 12/76
SL/mw

Home visit. Mr. Popen was at funeral home arranging the funeral. Jennifer looked tired and strained. She said she did not sleep at all last night. She stated that the child first fell from her high chair yesterday afternoon and said "hurt! hurt! hurt!" but could not tell Jennifer where it hurt. Since then Kim had been bumping into things as if she was in a daze. The child was seen leaning on her left leg when walking. Judy Vandenberghe said she also noticed the child appeared to be a little dizzy. After supper Jennifer put Kim out on the back porch, a porch 3 feet high, without any railings, to play. Several minutes later, she found the child had fallen from the patio and was unconscious. Not long after they reached the hospital the child died.

Kim was left with an 18 year old babysitter Debbie Ginn while Jennifer was in hospital having Karie. The only persons Kim had ever been left alone with were Mr. Francis Kameka and his mother. Detectives Ross and Walters (sic) were investigating into this situation.

AUG 13/76 SL/mw	Popen second child, Karie was taken into care and under our protection.
AUG 16/76 SL/mw	Our workers, Mrs. Kirby, Mr. Carter and myself attended Kim's funeral on marginal date. Later on in the afternoon, Jennifer informed the worker they now were staying at 211 Cameron St. 337-9663. The place belongs to Mr. Popen's brother.
AUG 18/76 Sl/mw(sic)	Court date for Karie had been adjourned to August 30 at 1:30 p.m.
AUG 30/76 SL/mw	Court date for Karie again had been adjourned to Sept. 20 1:30 p.m. due to fact that we have to base our action on the result of investigation on Kim's death.
AUG 31/76 SL/mw	Jennifer went over to Port Huron to take the lie detector test. Her lawyer, Mr. Higgins had gone with her. The result of this test is unknown to us.
SEPT 1/76 SL/mw	Karie is arranged to be baptized at St. Joseph's Church on marginal date and the Popen's (sic) will also have their first visit with the child at the same time.
SEPT 20/76 SL/mk	Six months society wardship was granted for Karie Popen, Jr. on marginal date. Information re Karie's

development is in child care file #9563 worker, Mrs. Mary Kirby.

SEPT/76
JAN/77
SL/mk

In mid September both Mr. and Mrs. Popen had been arrested and charged with manslaughter. Mr. Popen was granted bail on Sept 20/76 on condition he raise a $3,000 surety. Mrs. Popen was remanded to St. Thomas Psychiatric Hospital for assessment for a period not to exceed 60 days. Court hearing was adjourned from Sept. 27/76 to Nov. 29/76 to Jan.13/77 to Feb. 17/77. Jennifer was out of St. Thomas Hospital at the end of November 1976. But it was said that she had taken an overdose, therefore spent the Christmas and New Year's holidays at 3 East in Sarnia General Hospital and was committed to St. Thomas Psyhciatric (sic) Hospital by Dr. Tufford. It was also said she had never shown any emotion toward her dead child during this period.

FEB-MAY/77

Court hearing was adjourned from Feb. 17/77 to March 31/77 to June 15 and 16 for preliminary hearing regarding Kim's death.

On Feb. 16/77 a conference was held here in Sarnia by St. Thomas Psychiatric Hospital social worker Nancy Cadesky, Mr. Khatab, social worker at St. Joseph's Hospital and myself. Jennifer was still being assessed at the time and was at St. Thomas behaviour modification ward. The hospital staff were having a difficult time gathering background information. Whatever they have gotten were rather unreliable because Jennifer appeared to be manipulative, and pre-fabricating. Their first assessment from Sept. 23/76 to Nov. 22/76 tended to indicate that Jennifer has personality disorder, is paranoid and has suicidal tenency (sic). This second time the staff wondered if

Jennifer will have psychotic behaviour when under a stress situation. In the hospital Jennifer is always neat and collected and appears to be co-operative with the staff. However, the things she told the staff were rather unbelievable, e.g., she had a twin sister who died years ago, both twin sister and her dead child bid her to join them etc.

Mr. Popen has been phoning and visiting Jennifer in the hospital one or two times a month. Sometimes Jennifer would refuse to see him or speak to him. Annals Popen has not been working since last August. Court hearing regarding Karie, Jr. was adjourned to March 14 then to April 4/77. During this period Mr. Popen gave us his sister and brother-in-laws names, Merline and Henry Kameka, 105 S. Vidal St. 336-9203, saying this couple can look after Karie before the Popen's (sic) court situation is clarified. However, when visiting the Kameka parents, this worker was told that their landlord had just put their house for sale, therefore before they know where to go, they could not look after Karie. Under this circumstance, no investigation was necessary re this couple's ability to care for another young child.

Eight months society wardship was granted for Karie Popen Jr on April 4, 1977.

JUNE/77
SL/mk

Preliminary hearing for the Popens in the Criminal Court took place on June 15 and 16. As the court has not finished questioning all the witnesses, this preliminary hearing again is remanded to August 11, and 12, 1977. This worker was subpoened as a witness but was not called for this preliminary hearing.

TRANSFER
SUMMARY
SL/mk

As the court is investigating into this situation, there is nothing we can do except consulting with the child care worker, Mrs. M. Kirby, regarding Karie's development and assisting her in arranging visits between parents and child. As this worker is leaving the agency, this case is transferred to Mr. H.R. Carter as of June 27, 1977.

See progress report #1
See progress report #2

SCHEDULE 2-F

A REVIEW OF THE POPEN CASE

prepared for

THE CHILDREN'S AID SOCIETY OF THE CITY OF SARNIA AND THE COUNTY OF LAMBTON

by

A Committee chaired by

Mrs. Margaret Farina, Associate Executive Director,
Ontario Association of Children's Aid Societies.

February 15, 1978.

This is a confidential document. It was prepared for the Board of Directors of the Children's Aid Society of Sarnia and the County of Lambton. The Committee disclaims any responsibility for breach of the rules of confidentiality should any of its contents be disclosed to persons outside the Corporation.

The Mandate

The mandate for this review was stated in a letter received from the President of the Lambton Society dated December 19, 1977 and addressed to the president of the Ontario Association of Children's Aid Societies.

> "I am requesting, subject to your agreement, that you select three social workers whom you feel could visit Sarnia in order to 1) study this case in detail; 2) evaluate the decisions and actions taken by our own staff in the light of the actions taken by other community agencies; and 3) make a report summarizing the activities of the staff with respect to this case and offer any reactions or recommendations they feel appropriate ...
>
> The intention of such a review would be to examine the appropriateness of the staff's actions in this case in order to prevent the recurrence of such a tragic event in the future." (Appendix 1)

Subsequent to receipt of this request a chairman was appointed and a committee of three was struck. Mrs. Margaret Farina, Associate Executive Director of the Ontario Association of Children's Aid Societies was appointed chairman, the committee members being Mr. Bruce Heath, a former local director of a children's aid society and presently a Supervisor with the Ministry of Community and Social Services, and Mr. Arne Petersen, Director of Resources with the London Family and Children's Services. Composition of the committee was considered carefully and it is thought that a good representation of relevant expertise was achieved. The committee met on January 13th to study written material pertinent to the task and to discuss the method that would be used. Subsequently we visited Sarnia on January 25th to 28th to interview those people concerned directly with the case, and others concerned with the operation of the Society, and generally to conduct this phase of the review. The committee worked under considerable time pressure as its report was requested for the Lambton Society's February Board meeting.

We take this opportunity to express our thanks to the Society President, Mr. David Allen, the Local Director, Mr. William Lovatt and those we interviewed for the excellent co-operation on their part.

We also take this opportunity to commend the Board of Directors of the Society and the President for having requested this review.

We also note at the outset of this Report that of some 1178 children who have come into the care of the Society over the past ten years, Kim Popen is the only one to have died from other than natural causes while in the Society's care. While we note this, we also note that one is too many, and it is our hope, shared by the Society, that this Report will assist in assuring as far as is humanly possible that this never happens again.

The Method Used

The method the committee adopted was to read all case material, reports, court transcripts and press clippings related to the case; to interview all those persons who were involved in decision-making or case handling; and any others who were associated with the case. In addition we talked with people who are associated with the Society but who were not involved in this case, and we read letters received from two former foster parents.

All interviews were held in the Village Inn rather than on Society premises as it was felt that this more neutral setting would be more conducive to an open sharing of information. Interviews were scheduled by the Society president, and staff members were informed of our desire to talk to them. Certain key people were requested to make appointments. In three instances interviews were conducted by telephone because people were not available, and in at least two cases we asked staff members to return for a second interview as we wished to clarify information they had given in the light of subsequent information received. In addition to this, a local radio station carried several reports of our presence in the city and the purpose of our visit, inviting anyone interested to arrange to see us. We also had extended interviews both initially and at the conclusion with the President and the Local Director. It is the opinion of the committee that more than a reasonable opportunity was given for interested persons to come forward.

Interviews were conducted with 11 staff members including 3 supervisors (2 present and 1 past) and the Local Director, 2 board members including the president, 3 members of the Lambton police, the hospital social worker, the probation officer and volunteer, the society solicitor, one of the physicians involved in the case, and the Supervisor of Field Services for the Ministry of Community and Social Services. A total of 22 people were interviewed.

Areas of Concern

The chronological listing of events in the Popen case constitutes Appendix II. This material was taken from a photocopy of the family service file which was supplied to the committee. A separate report for the Child Welfare Branch was compiled and dated December 8, 1977, and a further report was prepared for the Society Board of Directors, dated December 15, 1977.

The committee is concerned that discrepancies exist in these separate reports. The family service record indicates referral on June 17, and the initial enquiry states clearly that "this defensive, hostile young mother should be closely supervised considering the history of the recent six weeks." (two previous hospitalizations). The Child Welfare Branch report has the referral dated June 1. The report to the Board of Directors does not give a specific date other than the month.

In the June 19th entry in the family service file, it is stated that the case was due for assignment to H.R.C.., but ... "there was apparently a misunderstanding about the opening of the case at that time." The Child Welfare Branch report states that "the case was not assigned but a follow-up call was made to the City Police who suggested that we wait to make a home visit. They would report back to us if necessary." This is denied by the police. The Child Welfare Branch report indicates that the case was opened to H.R.C. on August 31. The report to the Board of

Directors states that in June, 1975, there was "insufficient evidence to warrant intervention on the part of the society" and that the police accepted a "watching brief." We explored this thoroughly with the police and they deny any such arrangement, stating that they assumed the case would be acted upon by the Society following referral, and indeed they made a follow-up telephone call to the Society on July 2nd. They also note that any decision or arrangement would be recorded in their files.

The committee is of the opinion that these discrepancies are serious in that they could indicate an attempt to camouflage case handling that is seriously inept, and is inexcusable in a case that is clearly one of child abuse. Two points are at issue, 1) the handling of this case in the initial phase, and 2) the unexplained discrepancies in the various reports, the record, and the information from the police.

The committee notes the excellent quality of the initial intake on June 17 and the responsiveness of the Society at that phase of the case. There appears to be no adequate explanation, however, for the fact that this case was left unattended from mid June until August 29, a period of roughly 10 weeks.

In our interviews we spent considerable time trying to determine what had happened to the Popen case during these 10 weeks. The caseworker to whom it was assigned (H.R.C.) claimed no knowledge of the case until August 29th, as the record indicates. The supervisor who would have made the assignment suggested that the caseworker simply didn't "pick up" the case. It was also suggested that he may have been on vacation. A check of agency records indicated that he was not. In addition, the supervisor noted that she did not know where the case was during the summer, and that the usual case opening procedure was not followed "for some reason." We note that the record indicates "a misunderstanding" in the opening of this case. In any event there is no escaping the fact that responsibility for case assignment and for monitoring what happens to cases, rests clearly with the supervisor and no one else. This is particularly important in abuse cases. The explanations given to the committee are not sufficient.

The committee is concerned about the apparent interference on the part of the Popen's lawyer, Mr. Higgins, with the caseworker, H.R.C., in the handling of this case. The case record states that:

> "With regard to worker/client case relationships, case goals, etc. this was legally restricted by the Popen's lawyer and substantiated by a telephone call from Mr. Higgins to myself on January 16, 1976 at which time Mr. Higgins requested my help in changing a Court date. In trying to comply with his wishes I agreed I would be in touch with Mr. & Mrs. Popen, to which Mr. Higgins replied "please, over my dead body you don't." Consequently, under these circumstances, but by obligation to give evidence of recent home situations it was necessary I request permission from Mr. Higgins' office for the only two home visits which were January 16th/76 and February 20/76. On both these occasions permission was granted but with the added instruction "don't quiz them."

We questioned the caseworker's lack of knowledge of his rights and his failure to challenge or to ignore Mr. Higgins' interference. The worker informed us that he had in fact enquired of the supervisor whether Mr. Higgins had the rights he had assumed, and he was told by the supervisor to honour Mr. Higgins' request. We could obtain from the supervisor no answer that would explain this situation. When we asked why she did not consult the judge (whom she frequently consulted on matters of legal procedure) we were told that she "didn't think of it." We must wonder why consultation was not sought from any source. We were also informed by more than one person that the supervisor herself was intimidated by Mr. Higgins and "would have difficulty in going against his wishes."

We were informed by the supervisor that on the day of the court hearing (February 25) she approached Mr. Higgins and invited him to become a member of the Society's Board of Directors. He did in fact join the Board in March, 1976 and resigned in January, 1978.

We were also informed by the supervisor that she had previously asked the Local Director to retain an agency lawyer and this request had been denied on the grounds of lack of funds. (This was not verified).

We are concerned about some of the practices that appear to take place around court hearings. For instance at the February 25, 1976 court hearing, the supervisor asked for two months society wardship, when, we are told, the caseworker recommended six months. The Judge gave six months wardship in spite of the Society's request for the two months. When questioned about this the supervisor informed us that asking for only two months was "a strategy," that Mr. Higgins on behalf of the parents wanted two months and that the supervisor was in fact wishing to appear to be complying with his wishes. She informed us that she had privately spoken to the judge and informed him that she really wanted six months but would be asking for only two. This "strategy" was never, apparently, communicated to the caseworker, who was given the explanation that she would ask for two months because the child had been in the Society's care already for about six months.

If this is an accurate example of the way the court is used, and if this is an example of methods employed by the Society's supervisor/court worker, and if this is an example of the degree of trust between supervisor and caseworker and of the attitude to Mr. Higgins, then it brings the Society's integrity into question, as well as that of the court.

The committee is concerned about the rationale for and the procedure used in transferring the case from the first caseworker, H.R.C., to Mrs. L. It is usual procedure when a case is to be transferred for this to be discussed in conference with (at least) the supervisor and the two workers. It is also customary professional practice for the rationale for the transfer to be clearly spelled out and recorded. Also it is professionally sound for the transfer to take place on a gradual basis with the client given an understanding of the reasons for transfer and an opportunity to meet the new worker prior to the withdrawal of the present worker. In the Popen case we find no discussion of the reasons for transfer, only the notation that "...in consultation with my supervisor this case will be transferred to Mrs. S. Lo..." On enquiring about this, the supervisor gave as her reason for transfer the fact that she wanted a female worker on this case and thought that Mrs. L., being oriental and Mrs. P. being Jamaican, and both young, they would "be a good match." She also noted that Mrs. L. had more time, being new on the staff, having a small caseload, and that Mrs. Popen would not talk to H.R.C. Our conversation with H.R.C. gave a different picture. He stated that the supervisor told him the case was to be transferred to Mrs. L. and it is his strong feeling that this was done in order to appease Mr. Higgins.

In any event, we question the method used in transferring this case and note that transfer should be for the benefit of the client and keeping in mind, in this case, the planning and protection of the child, Kim. In considering the method used in transfer we must question the supervisor's use of her authority, as well as her professional practice.

Rationale for transfer is also questionable. Any case as obviously serious as this one should never be assigned to an inexperienced worker with no social work education or experience and we note that Mrs. L. had been with the Society less than three months. It is recommended practice in cases of child abuse that these cases be assigned to the most experienced, well qualified personnel. Assignment of this case to a person with virtually no protective service experience and no social work qualifications was a gross error in judgement on the part of the supervisor.

The process of decision-making in the agency comes into question and we are particularly concerned about the crucial decision to return Kim to her parents. The dynamics of this decision were explored meticulously as they relate also to the authority structure in the Society which will be discussed separately.

In exploring the decision to return Kim to her parents, we talked with the supervisor, the (now retired) adoption supervisor, the child care worker, both family service workers and two police officers.

The record indicates that the decision to return Kim was made at a case conference on May 6, 1976 which involved both supervisors, the child care worker and the family service worker. It is our understanding that the question was whether to return Kim before the birth of the second child in early July, or to keep her in care until Mrs. Popen had learned to cope with the new baby. There did not seem to be any question of Kim's eventual return home. Although both the family service file and the child care file indicate that the decision to return was made at this conference, the verbal statements made to us indicate that the conference was merely a formality, that the family service supervisor had previously made the decision that the child would be returned, and that the opinion of others would not be considered. We were also told that the constable, when he heard at a meeting prior to May that Kim might be returned, exclaimed "Do you want her in her grave within three months?" We verified this with the constable, who recalls making a statement to that effect although he could not vouch for the exact words used. The hospital social worker reported to us that he was "amazed to hear that the child had been returned." The Child Care record indicates Kim's upsets and regression after visits home, and Mrs. Popen's awkward handling of the child. It would appear that the philosophy of the family service department supervisor was to return children to their homes as soon as possible regardless of the opinion of other workers familiar with the case. It appears that the Society lost sight of its primary mandate which is to protect children.

It is a serious situation if all the facts in each case are not considered and opinions and observations shared and discussed. In a social work agency case decisions must be made for each case on an individual case basis, and not on the sole basis of an overall philosophy. In view of the evidence given to us, our opinion is that the family service supervisor failed to consider other opinions and made the decision to return Kim without adequate evidence that she would be safe. In fact, on the contrary, there was considerable evidence that this was still a high risk home at the time the decision was made to return Kim home and continued to be so.

We note that since there had been only two visits prior to transfer of the case to Mrs. L. and work with the family was limited to a period of three months prior to Kim's return (sic). We also note in the recording the superficial quality of the relationship and understanding. A similar naivete is evident in the expectation that a Parent Effectiveness Training course, which had begun only ten days prior to the May 6 decision, would solve the Popen's parenting deficiencies. More specific indicators are: the notation that Mrs. Popen did not understand the needs of children; the relationship of the parents to Kim; the fact that (May 6) "home visits have proven to be very disruptive to Kim. Her behaviour regressed every time after her visits at home"; the description of Mrs. Popen's handling of Kim's temper tantrums and the child's reaction is not realistic; in the June 17 recording Mrs. Popen explains that Kim bumps into things and hurts herself; there is notation of Kim's difficult behaviour and of the pressures on Mrs. Popen; although a friendly relationship had been established with Mrs. Popen, this changed after the birth of the baby and she became "cold and distant," looked tired and unhappy and "seemed to be living in fear" that the CAS would take the child away, she seemed suspicious of the worker, and on July 26 was trying to avoid the worker. The Society was concerned enough to apply for a supervision order "due to the fact that Kim was a difficult child and a second child was born to this family and the home situation was not stable enough."

Discussion of decision-making brings into question the authority structure in the agency. We were told in the course of our interviews that the family service department assumed an unusual degree of case control, that the supervisor of that department had the final word, and that opposing her decisions was regarded as a personal affront. When there is a difference of opinion in a case matter it should be accepted practice that further opinion be sought, and that the person with final authority be brought into the decision-making process, namely the society director. This did not happen in the Popen case. Because we were told so often of the supervisor's misuse of authority and the facts substantiate it, we must give credence to it. We must also question the fact that the local director apparently was either unable or reluctant to do anything about this situation in his Society. It is certainly possible, if not probable that he would not know the facts of the Popen case, since he would rely on the supervisor to keep him informed. But certainly he could not avoid knowing of the strains brought about by the supervisor's assumption of authority.

The committee is concerned that after the death of Kim the Society left the baby Karie in the care of the parents from August 11 to August 13 before apprehending. We are told by the supervisor that the baby was, in fact, in the care of neighbours in the same building, but the police inspector assures us that Karie was in the care of the parents except for a period of two to three hours during which time the Popens were with the police. The police inspector also informed us that when he contacted the supervisor to discuss taking Karie into care, he was told that the society "had no basis to take him into care." He informed us that in order to have the Society apprehend the baby it was necessary for the Crown Attorney and the Coroner's office to telephone to request this. (This latter was not verified).

The committee is concerned about the lack of involvement of the Society with agencies and services in the community. In any suspected child abuse case the onus is on the agency with prime responsibility, i.e. the CAS, to call regular case conferences involving all persons in any way connected with the case. Regular conferencing did not take place in the Popen case, rather, when information was shared this seemed to happen on an individual and also casual basis. This kind of all-inclusive conference should be held at a minimum at points of decision-making, and ideally at least monthly. In the Popen case such conferences should have included any agency personnel connected with the case including the foster mother, and other professional people such as the police, PHN, probation personnel and the hospital social worker and possibly Mrs. Popen's doctor. The decision to return a child in a risk situation is too crucial to be left to one or two individuals.

The qualifications of staff in the Society need further exploration. While we appreciate that various kinds of training have a role in a protective service, we note that the worker assigned to this case did not have social work qualifications or experience. We also note the lack of knowledge of the Society's authority on the part of the first caseworker assigned to the case, as well as the family service supervisor in relation to the Society's rights and the interference of the lawyer. This brings into question the frequency and level of in-service training programs and the provision by the Society for continuing education for staff in general. We understand that professional development programs are complicated by the unusual role of the clerical staff in the agency, and that tensions between professional and clerical staff are heightened by clerical staff expecting to be included in professional development meetings. While it is essential that clerical staff be a part of any general staff meetings, it is inappropriate that they attend professional development sessions. We must ask why this situation has been allowed to develop.

The role of administration is brought into question by these latter concerns. In also every interview with staff members comment was made about the failure of the director to exercise his authority or to give leadership to the staff. In the opinions of most, this resulted in his role being usurped by the supervisor of the family service department who lacked the proper authority to act as an administrator. Of all the complaints listed by staff it was the lack of firm leadership and control by the local director that resulted in the greatest sense of frustration and almost a feeling of abandonment. The committee was surprised to learn of the lack of clear procedural directives and written guidelines. We were informed that there is insufficient planning for children in care, that they are "neglected in care" and "moved from pillar to post with little planning." We also have the picture of little discipline and sloppy practices in the family service department. We are informed that Society records which are quite correctly kept in a vault are, in fact, readily accessible to a variety of people since so many have the combination and ready access.

Staff morale at all levels and in all departments is very low, with the possible exception of the Child Care Department, and apparently has been for some time. We note that the Supervisor of Field Services of the Ministry of Community and Social Services was called in June and again in November, 1977 to discuss staff problems, but it appears that no follow-up occured (sic) following his visits.

The committee recognizes that in a service organization as complex as a children's aid society it is usual for some tensions to exist between departments. We were given the impression, however, that these tensions in the Lambton Society have become extreme to the point where they can interfere with or impede individuals in their work.

We were told of very poor relationships between staff and board, with little communication or real understanding of each other's roles and functions. There seem to be no clear channels of communication within the Society and no way for board members to know or understand the working of the Society or the problems and needs of staff, including foster parents. We note especially that board were not formally informed of the Popen case until it was reported in the press (December, 1977). There seems to be a repressive atmosphere and indeed, we found some staff members we interviewed stating to us that they were hesitant to come because of fear of reprisals against them. Whether this is so or not is less important than the fact that the feeling was present and was stated in these terms. There seems to be little feeling of loyalty or committment to the organization.

We would like to think that the events of the Popen case could not be repeated today. However, we have doubts about this and note that three staff members of the Society told us about the reluctance of the Society to take action when cases are referred. Two cases were cited to us. In one there were 12 complaints and referrals over a period of six months. Nine such calls were made before the Society visited, having referred the matter to the Lambton Health Unit. The first visit was made in November (no one home), and the child was finally apprehended in December. This occured (sic) in 1976, wardship being granted in January, 1977.

If this report is factual (and it can be checked) then we have doubts about the Society's capacity for responsiveness in the carrying out of their mandate, and again of the quality of supervision and professional standards.

We have gone into some detail in regard to the Society's role in the Popen case. We cannot, however, leave the impression that total responsibility rests with the Society. The responsibility for the events of the Popen case must be shared between the Society, the Ministry, the legal system and the community. Having detailed the Society's role, we look briefly at the others.

a) The Ministry of Community and Social Services

One of the purposes of the Child Welfare Branch of the Ministry of Community and Social Services is to supervise the way in which the societies carry out their mandate. This is spelled out in the Child Welfare Act (Part 1, Section 2(a)) as follows:

> The Director shall
>
> a) advise and supervise children's aid societies;
>
> b) inspect or direct and supervise the inspection of the operation and records of children's aid societies;

The Ministry did not, in fact, carry out this function during the time of the Popen case.

Another purpose of the Ministry is to provide adequate funding so that an acceptable level of service is maintained. In our interviewing we heard repeatedly of high case loads, lack of time on the part of staff and insufficient supervisory staff. We have noted that a Society solicitor was not obtained due to lack of funds. We have noted the need for appropriate staff qualifications and for training programs. We suspect that the energies of the local director were channeled into budget rather than service considerations. We note that the Society has no accountant on staff. All of these considerations contribute to low staff morale and decreased effectiveness.

b) The Legal System

The legal system as it was demonstrated in this case must surely take some responsibility. We note especially the number of adjournments, and the interference of the lawyer with the Society caseworker. Although these actions may be accepted legal practice we see them as obstructing the Society's handling of the case.

In the criminal case hearing involving the Popens' and the Crown, the judge took the liberty, in the name of justice, to speak privately to the press and to condemn the CAS for "almost criminal neglect" in their handling of the case. The same press report indicates that evidence did not disclose the role of the Children's Aid Society. (Appendix III)* To our knowledge the judge's statement was made without the Society ever having the opportunity to defend itself or to explain its actions. We believe that there is another, more appropriate channel that could have been used (request for a judicial enquiry) to give the judge an opportunity to express his concern.

c) The Community

The community must also share in the responsibility for the death of this child. The Board of Directors of the Society is made up of representatives of the community and we are aware through lack of attendance at meetings and apparent lack of interest in the work of the Society, of an apathy on the part of many members of the Board, and an apparent lack of interest in serving on the Board, on the part of the community.

The derogatory appellation "child snatchers" is well known to CAS staff, and in an effort to encourage the community to use their services, societies generally have reacted by being hesitant to apprehend children, and having apprehended, to re-uniting them with their families as soon as possible.

A more serious concern is that the community seems to condone a certain level of child abuse, and citizens fail to report suspected

*Not included in exhibit filed.

incidents, perhaps of conflicted feelings about privacy and parental rights. Whatever the reasons, we note that this child was seriously abused on many occasions and people in the community must have been aware, yet it went unreported. For example, in one instance a neighbour, in giving evidence at the criminal hearing, stated that she had heard Kim screaming for "five or ten minutes." She did nothing.

Recommendations

Based on our findings in the review of the Popen case, the following are the recommendations of the committee:

1. That a select committee of the Board, using other appropriate personnel, undertake a thorough review of the administration of the Society. The committee's mandate should include as a minimum,
   a) the channels of communication within the Society and between staff and Bord,(sic)
   b) examination of the responsibilities of members of the Board,
   c) examination of the job and reporting responsibilities of staff, and the administrative structure of the Society,
   d) examination of the mechanisms for regular periodic case review,
   e) recommendation of measures that might be taken to increase understanding between Board and staff.

2. That the Ministry provide consultation to assure that the Board's committee has the resources it requires to accomplish its task.

3. That the Board review the competence of supervisory staff and other staffing needs of the Society to assure that it is in fact able to provide a high quality service, with particular reference to its mandatory functions.

4. That the Board and staff work together to update or establish written policies and procedures for all programs and services of the society.

5. That the Ministry of Community and Social Services honour its legislated function of regular review and consultation with the societies, and report regularly to each society's Board of Directors.

6. That, in addition to case monitoring, the Ministry provide on-going consulation of a professional calibre to assist the Society to maintain professional standards of practice.

7. That the Province undertake to investigate the adequacy of funding for the child abuse program and protection services of this society to assure that adequate funding is provided for the Society to carry out its mandate as spelled out in the legislation.

8. That the Province review the present practice relating to use of the courts and the legal system in child welfare cases. In view of the events in the Popen case we are not convinced that the present system is the best possible to protect children and safeguard the rights of parents.

9. That the Board of the Lambton Society receive appropriate direction from the Law Society of Upper Canada related to conflict of interest when a solicitor who is a member of the Board is representing parties in a case which is active with the Society.

10. While we note that some steps have been taken to improve the handling of child abuse cases, it is recommended that the Society study and adhere to procedures detailed in "Guidelines of Practice and Procedure in the Handling of Cases of Child Abuse", published by the Ontario Association of Children's Aid Societies in 1976.

This Report is respectfully submitted by the review committee.

(Mrs.) Margaret Farina, BA, MSW, MEd., Chairman,
Associate Executive Director,
Ontario Association of Children's Aid Societies

"Margaret Farina"

Mr. Bruce Heath, BA, MSW,
Supervisor,
Ministry of Community and Social Services

"Bruce R. Heath"

Mr. Arne Petersen, BA, MSW,
Director of Resources,
Family and Children's Services of London and Middlesex

"Arne Petersen"

APPENDIX I

652, Winchester Crescent
Sarnia, Ontario
N7S 4P7.

1977 12 19

Mr. R.N. McQuarrie, President
Ontario Association of Children's Aid Societies,
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M4Y 2P4

Dear Mr. McQuarrie:

No doubt you have been following the recent news release and editorials in the press pertaining to the conviction of Mr. & Mrs. Annals Popen relating to the death of their daughter Kim Anne Marie Popen. Prior to her death Kim had been a temporary ward of the Lambton County Children's Aid Society. She died shortly after her return to her natural parents.

Many have questioned the decision made by our agency to return Kim to her parents. Our own board is especially concerned. At an emergency board meeting held on Thursday December 15, 1977 (see attached news release) a motion was passed to request that a review committee of three social workers be appointed to review this case in detail. This request was favourably received in an earlier telephone conversation on the same day with Mr. Scotty Dymond, your executive director.

I am requesting, subject to your agreement, that you select 3 social workers whom you feel could visit Sarnia in order to 1) study this case in detail, 2) evaluate the decisions and actions taken by our own staff in the light of the actions taken by other community agencies, and 3) make a report summarizing the activities of the staff with respects to this case and offer any reactions or recommendations they feel appropriate. Hopefully a report could be made available for Janury 24, 1978, which is our next regular board meeting.

cont...

The intention of such a review would be to examine the appropriateness of the staffs' actions in this case in order to prevent the recurrence of such a tragic event in the future. Because our board is essentially a lay group we are not in the best position to take an objective nor impartial view of the matter. Hence a "peer review" would be more fitting.

I am unaware of any past requests which are similar to the one being proposed here. Nevertheless I am hoping that you will look favourably on it. It could provide, for any member of our staff who may wish to express their views, an opportunity to do so.

I would welcome your early reply to this request as well as any suggestions you may have with respect to funding such a study. My business telephone number is 1-519-336-1500, and home number is 1-519-542-9713. Between December 22nd and January 2nd, 1978, I will be in Montreal and can be reached at the residence of Victor Longhurst, telephone number 1-514-747-4057. Alternatively you may wish to communicate as necessary with Mr. William Lovatt our local director.

Yours truly,

"David A. Allen"

David A. Allen, President
Children's Aid Society
Lambton County.

cc: Mr. H.H. Dymond, Executive Director
Mr. Wm. Lovatt, Local Director
Mr. Stephan Charko, Supervisor of Field Services

APPENDIX II

Case Events in Chronological Sequence as reported in Family Service file.

June 17, 1975.	Referral by Det. Gander. Social Worker and case aide visit. Report written "should be closely supervised considering the history of the recent 6 weeks."
June 19	Recording. Case was due for assignment. "Apparently a misunderstanding about the opening of the case at that time."
August 31	Case opened to H.R.C.
September 1	Kim released from hospital, under care of child care worker, Mrs. M.K.
September 8	Initial Court hearing, adjourned to Oct. 29.
October 29	Court adjourned to January 19, 1976.
October 30	Criminal charges laid by police under C.W.A. Adjourned to November 13.
November 13	Adjourned to January 19, 1976.
January 16, 1976	P's lawyer, Mr. Higgins, tells worker not to be in touch with Ps ... "over my dead body." Worker requested permission of Mr. H. to visit and was told "don't quiz them."
January 16	Home visit.
January 19	Adjourned to February 23, 1976.
February 20	Home visit (only 2 home visits by H.R.C.) Worker records his feeling that Mrs. P. is a

	proverbial liar - reveals her story of death of previous child at 7 months in Jamaica, her evasion of reasons. Mrs. P. isolated, young, inexperienced.
February 23	Mr. P. admits guilt.
February 25	Society gets order of society wardship for 6 months. Mr. P. to attend A.A., both parents to attend PET course. Weekly supervision in their home by CAS. Results of Kim's visits to be reported to supervisor, M.H., weekly.
February 29	Case transferred to Mrs. L. (H.R.C. informed of the transfer following court hearing of February 25.) Noted Mrs. P's pregnancy. Mr. Brower, Probation, did not attend February 25 hearing nor did he communicate with CAS office.
February 27	Mrs. L. begins visits to P. Home. Records Mrs. Ps revelations re her background, fact that she raised her brothers and sisters but did not seem to know that food, clothing and lodging were only one aspect of child rearing.
March 4	Home visit. Mrs. P. speaks of a 5 year old son in Jamaica. Worker records that with Kim in care tension is reduced in the home and that once Kim returns the situation will be different. It will require close observation and intensive moral support to parents.
March 18	Home visit. Mr. & Mrs. P. Home. PET course to begin April 22.

March 29	Court. Mr. P. pleads guilty of charge of neglecting to protect child. Probation and suspended sentence for 1 year.
April 15	Kim begins home visits weekly. Some differences in handling noted, need of course in parenting noted.
	Worker continues weekly visits. Improvement noted and discussion of etiology of abuse. Need of parenting course noted.
May 6	Ps would like Kim home prior to birth of new baby. Worker records that the home visits have been very disruptive to Kim. Reported case conference, M.H., L. Archer, M. Kirby, Mrs. Lo decided Kim should either be returned home as soon as possible or home visits be stopped and Kim returned after parents adjusted to new baby. Need another visit before deciding.
	Home visit. Ps told the society unsure, and worker feels Mr. P. needs to improve.
May 7	Mrs. K. and worker select May 27 as day to return Kim. No visits prior to that date. Mrs. P. informed.
May 27	Kim returned home.
May 31	Home visit. Kim has temper tantrums, hard to manage, is better on weekends when Mr. P. home.
June 1-16	"Overall situation is under control." Kim has flu near end of June and is teething, miserable. Some problems in handling Kim noted.

June 17-July 6	Difficulties in managing Kim reported. Reported that Kim would hurt self by bumping into things.
July 6	Karie born.
July 7-23	Home visits continue. Mrs. P appeared tired, cold and distant to worker. Some problems with Kim noted. Mrs. P seems afraid CAS will remove Kim again, is assured CAS not asking for continuing supervision order. July 23 Kim appeared happy.
July 26	Worker telephones. Mrs. P "putting her off." Worker and supervisor decide to apply for supervision order. "Home not stable." Court date arranged for Aug. 4.
July 27	Notices of hearing served on Mr. & Mrs. P.
August 4	Brief home visit. Kim sitting quietly.
August 11	Relatives phone to say Kim had died from a fall off patio.
August 12	Home visit. Mrs. P reports Kim was dizzy.
August 13	Karie taken into care.
August 18	Court date for Karie. Adjourned to August 30.
August 30	Court adjourned to September 20.
August 31	Mrs. P to Port Huron for lie detector test with Mr. Higgins.
September 20	6 months society wardship granted for Karie.
September 15	Mr. & Mrs. P. arrested, charged with manslaughter. Mr. P. granted

	bail on September 20. Mrs. P. to St. Thomas Psychiatric Hospital.
September 27	Court hearing adjourned to November 9.
November 9	Adjourned to November 29.
November 29	Adjourned to January 13, 1977.
January 13, 1977	Adjourned to February 17, 1977. (at end of November Mrs. P out of St. Thomas took overdose. Committed to St. Thomas).
February 17	Court hearing adjourned to March 31.
March 31	Adjourned to June 15 and 16.
March 14	Court hearing re Karie adjourned to April 4.
April 4	8 months society wardship granted for Karie.
June 15-16	Preliminary hearing for Mr. & Mrs. P. Remanded to August 11 and 12, 1977.
June 27	Case transferred to H.R.C.

SCHEDULE 2-G

A REVIEW OF THE POPEN CASE

prepared for

THE CHILDREN'S AID SOCIETY OF THE CITY OF SARNIA

AND THE COUNTY OF LAMBTON

by

A Committee chaired by

Mrs. Margaret Farina, Associate Executive Director,
Ontario Association of Children's Aid Societies.

February 24, 1978

This is a confidential document. It was prepared for the Board of Directors of the Children's Aid Society of Sarnia and the County of Lambton. The Committee disclaims any responsibility for breach of the rules of confidentiality should any of its contents be disclosed to persons outside the Corporation.

The Mandate

The mandate for this review was stated in a letter received from the President of the Lambton Society dated December 19, 1977 and addressed to the President of the Ontario Association of Children's Aid Societies.

> "I am requesting, subject to your agreement, that you select three social workers whom you feel could visit Sarnia in order to 1) study this case in detail; 2) evaluate the decisions and actions taken by our own staff in the light of the actions taken by other community agencies; and 3) make a report summarizing the activities of the staff with respect to this case and offer any reactions or recommendations they feel appropriate...
>
> The intention of such a review would be to examine the appropriateness of the staff's actions in this case in order to prevent the recurrence of such a tragic event in the future." (Appendix 1)

Subsequent to receipt of this request a chairman was appointed and a committee of three was struck. Mrs. Margaret Farina, Associate Executive Director of the Ontario Association of Children's Aid Societies was appointed chairman, the committee members being Mr. Bruce Heath, a former local director of a children's aid society and presently a Supervisor with the Ministry of Community and Social Services, and Mr. Arne Petersen, Director of Resources with the London Family and Children's Services. Composition of the committee was considered carefully and it is thought that a good representation of relevant expertise was achieved. The committee met on January 13th to study written material pertinent to the task and to discuss the method that would be used. Subsequently we visited Sarnia on January 25th to 28th to interview those people concerned directly with the case, and others concerned with the operation of the Society, and generally to conduct this phase of the review. The committee worked under considerable time pressure as its report was requested for the Lambton Society's February Board meeting.

We take this opportunity to express our thanks to the Society President, Mr. David Allen, the Local Director, Mr. William Lovatt and those we interviewed for the excellent co-operation on their part.

We also take this opportunity to commend the Board of Directors of the Society and the President for having requested this review.

We also note at the outset of this Report that some 1178 children who have come into the care of the Society over the past ten years, Kim Popen is the only one to have died from other than natural causes while in the Society's care. While we note this, we also note that one is too many, and it is our hope, shared by the Society, that this Report will assist in assuring as far as is humanly possible that this never happens again.

The Method Used

The method the committee adopted was to read all case material, reports, court transcripts and press clippings related to the case; to interview all those persons who were involved in decision-making or case handling; and any others who were associated with the case. In addition we talked with people who are associated with the Society but who were not involved in this case, and we read letters received from two former foster parents.

All interviews were held in the Village Inn rather than on Society premises as it was felt that this more neutral setting would be more conducive to an open sharing of information. Interviews were scheduled by the Society president, and staff members were informed of our desire to talk with them. Certain key people were requested to make appointments. In three instances interviews were conducted by telephone because people were not available, and in at least two cases we asked staff members to return for a second interview as we wished to clarify information they had given in the light of subsequent information received. In addition to this, a local radio station carried several reports of our presence in the city and the purpose of our visit, inviting anyone interested to arrange to see us. We also had extended interviews both initially and at the conclusion with the President and the Local Director. It is the opinion of the committee that more than a reasonable opportunity was given for interested persons to come forward.

Interviews were conducted with 11 staff members including three supervisors (2 present and 1 past) and the Local Director, two board members including the president, three members of the Lambton police, the hospital social worker, the probation officer and volunteer, the society solicitor, one of the physicians involved in the case, and the Supervisor of Field Services for the Ministry of Community and Social Services. A total of 22 people were interviewed.

Areas of Concern

The chronological listing of events in the Popen case constitutes Appendix II. This material was taken from a photocopy of the family service file which was supplied to the committee. A separate report for the Child Welfare Branch was compiled and dated December 8, 1977, and a further report was prepared for the Society Board of Directors, dated December 15, 1977.

The committee is concerned that discrepancies exist in these separate reports. The family service record indicates referral on June 17, and the initial enquiry states clearly that "this defensive, hostile young mother should be closely supervised considering the history of the recent six week." (Two previous hospitalizations). The Child Welfare Branch report has the referral dated June 1. The report to the Board of Directors does not give a specific date other than the month.

In the June 19th entry in the family service file, it is stated that the case was due for assignment to H.R.C., but ... "there was apparently a misunderstanding about the opening of the case at that time." The Child Welfare Branch report states that "the case was not assigned but a follow-up call was made to the City Police who suggested that we wait to make a home visit. They would report back to us if necessary." This is denied by the police. The Child Welfare Branch report indicates that the case was opened to H.R.C. on August 31. The report to the Board of

Directors states that in June, 1975, there was "insufficient evidence to warrant intervention on the part of the society" and that the police accepted a "watching brief." We explored this with the police and they deny any such arrangement, stated that they assumed the case would be acted upon by the Society following referral, and indeed that they made a follow-up telephone call to the Society on July 2nd. They also note that any decision or arrangement would be recorded in their files.

The committee is of the opinion that these discrepancies are serious and that they warrant further exploration. Two points are at issue, 1) the handling of this case in the initial phase, and 2) the unexplained discrepancies in the various reports, the records, and the information from the police.

The committee notes the excellent quality of the initial intake on June 17 and the responsiveness of the Society at that phase of the case. Our interviews, however, produced no adequate explanation for the fact that this case was left unattended from mid June until August 29, a period of roughly 10 weeks. In view of this, procedures, routines and monitoring of the way in which cases are transferred from intake should have further scruitny (sic).

The committee's questioning related to the Society's role in relation to the court brought us to the conclusion that a solicitor should be retained. It was also apparent to us that staff training is required specifically to give staff an understanding of their role in relation to the court, and their rights in relation to legal representatives of clients.

We also suggest strongly to the Society that they request the Law Society of Upper Canada to advise them in relation to the possibility of a conflict of interest when a lawyer who is also a Board member represents a client who is an active case with the Society.

The committee is concerned about the rationale for and the procedure used in transferring the case from the first caseworker, H.R.C., to Mrs. L. It is usual procedure when a case is to be transferred for this to be discussed in conference with (at least) the supervisor and the two workers. It is also customary professional practice for the rationale for the transfer to be clearly spelled out and recorded. Also it is professionally sound for the transfer to take place on a gradual basis with the client given an understanding of the reasons for transfer and an opportunity to meet the new worker prior to the withdrawal of the present worker. In the Popen case we find no discussion of the reasons for transfer, only the notation that "...in consultation with my supervisor this case will be transferred to Mrs. S. L....". On enquiring about this, the supervisor gave as her reason for transfer the fact that she wanted a female worker on this case and thought that Mrs. L., being oriental and Mrs. P. being Jamaican, and both young, they would "be a good match." She also noted that Mrs. L. had more time, being new on the staff, having a small caseload, and that Mrs. Popen would not take to H.R.C. Our conversation with H.R.C. gave a different picture. He informed us that he had not been involved in the decision to transfer, and his views of the reasons for transfer were at variance with those stated to us by the supervisor.

In any event, we question the method used in transferring this case and note that transfer should be for the benefit of the client and keeping in mind, in this case, the planning and protection of the child, Kim.

Rationale for transfer is also questionable. Any case as obviously serious as this one should never be assigned to an inexperienced worker with no social work education or experience and we note that Mrs. L. had been with the Society less than three months. It is recommended practice in cases of child abuse that these cases be assigned to the most experienced, well qualified personnel.

The process of decision-making in the agency comes into question and we are particularly concerned about the crucial decision to return Kim to her parents. The dynamics of this decision were explored as they relate also to the authority structure in the Society which will be discussed separately. In exploring the decision to return Kim to her parents, we talked with the family service supervisor, the (now retired) adoption supervisor, the child care worker, both family service workers and two police officers.

The record indicates that the decision to return Kim was made at a case conference on May 6, 1976 which involved both supervisors, the child care worker and the family service worker. It is our understanding that the question was whether to return Kim before the birth of the second child in early July, or to keep her in care until Mrs. Popen had learned to cope with the new baby. There did not seem to be any question of Kim's eventual return home. Although both the family service file and the child care file indicate that the decision to return was made at this conference, the verbal statements made to us indicate that the basic philosophy of the family service department was to return children to their homes, and that this philosophy would usually overrule individual opinions. We were also told that the constable, when he heard at a meeting prior to May, that Kim might be returned, exclaimed, "Do you want her in her grave within three months?"

We verified this with the constable, who recalls making a statement to that effect although he could not vouch for the exact words used. The hospital social worker reported to us that he was "amazed to hear that the child had been returned." The child care record indicates Kim's upsets and regression after visits home. It would appear from the information given to us that the Society, in an effort to re-unite the family, lost sight of its primary mandate which is to protect children. It is our opinion that the process of decision-making related to the handling of cases requires further scrutiny.

We note that there had been only two visits prior to transfer of the case to Mrs. L. and work with the family was limited to a period of three months prior to Kim's return. We also note from the recording what we interpret to be a superficial quality of the relationship and understanding. A similar naivete is evident in the expectation that a Parent Effectiveness Training course, which had begun only ten days prior to the May 6 decision, would correct the Popen's parenting deficiencies. More specific indicators are: the notation that Mrs. Popen did not understand the needs of children; the relationship of the parents to Kim; the fact that (May 6) "home visits have proven to be very disruptive to Kim. Her behaviour regressed every time after visits at home." Mrs. Popen's handling of Kim's temper tantrums and the child's reaction as described in the record sounds unrealistic; in the June 17 recording Mrs. Popen explains that Kim bumps into things and hurts herself; there is notation of Kim's difficult behaviour and of the pressures on Mrs. Popen; although a friendly relationship had been established with Mrs. Popen, this changed after the birth of the baby and she became "cold and distant," looked tired and unhappy and "seemed to be living in fear" that the CAS would take the child away; she seemed suspicious of the worker, and on July 26 was trying to avoid the worker. The Society was concerned enough to apply for a supervision order "due to the fact that Kim was a difficult child and a second child was born to this family and the home situation was not stable enough."

The committee is concerned that after the death of Kim the Society left the baby Karie in the care of the parents from August 11 to August 13 before apprehending. We are told by the supervisor that the baby was, in fact, in the care of neighbours in the same building, but the police inspector assures us that Karie was in the care of the parents except for a period of two to three hours during which time the Popens were with the police. The police inspector also informed us that when he contacted the supervisor to discuss taking Karie into care, he was told that the Society "had no basis to take him into care." He informed us that in order to have the Society apprehend the baby it was necessary for the Crown Attorney and the Coroner's office to telephone to request this. (This latter was not verified).

The committee is concerned about the apparent lack of involvement of the Society with agencies and services in the community at the time. In any suspected child abuse case the onus is on the agency with prime responsibility, i.e. the CAS, to call regular case conferences involving all persons in any way connected with the case. Regular conferencing did not take place in the Popen case, rather, when information was shared this seemed to happen on an individual and almost casual basis. This kind of all-inclusive conference should be held at a minimum at points of decision-making, and ideally at least monthly. In the Popen case such conferences should have included any agency personnel connected with the case including the foster mother, and other professional people such as the police, PHN, probation personnel and the hospital social worker and possibly Mrs. Popen's doctor. The decision to return a child in a risk situation is too crucial to rest with one or two individuals.

The qualifications of staff in the Society need further exploration. While we appreciate that various kinds of training have a role in a protective service, we note that the worker assigned tc this case did not have social work qualifications or experience. We also note that, according to the information given to us, there was a lack of knowledge of the Society's authority on the part of the first caseworker assigned to the case, as well as the family service supervisor in relation to the Society's role with the court, and legal representatives. This brings into question the frequency and level of in-service training programs and the provision by the Society for continuing education for staff in general. We understand that professional development programs are complicated by the unusual role of the clerical staff in the agency, and that tensions between professional and clerical staff are heightened by clerical staff expecting to be included in professional development meetings. While it is essential that clerical staff be a part of any general staff meetings, it is inappropriate that they attend professional development sessions. We must ask why this situation has been allowed to develop.

The role of administration is brought into question by these latter concerns. In almost every interest with staff members comment was made about the lack of leadership and direction on the part of the local director. Of all the complaints listed by staff it was the lack of firm leadership and control by the local director that resulted in the greatest sense of frustration and almost a feeling of abandonment. The committee was told that there are few clear procedural directives or written guidelines. We were informed that there is insufficient planning for children in care, that they are "neglected in care" and "moved from pillar to post with little planning." We also have the picture of little discipline and sloppy practices in the family service department. We are informed that Society records which are quite correctly kept in a vault are, in fact, readily accessible to a variety of people since so many have the combination and ready access.

Staff morale at all levels and in all departments is very low, with the possible exception of the Child Care Department, and apparently has been for some time. We note that the Supervisor of Field Services of the Ministry of Community and Social Services was called in June and again in November, 1977 to discuss staff problems, but it appears that no effective follow-up by the Society occured (sic) following his visits.

The committee recognizes that in a service organization as complex as a children's aid society it is usual for some tensions to exist between departments. We were given the impression, however, that these tensions in the Lambton Society have become extreme to the point where they can interfere with or impede individuals in their work.

We are told of poor relationships between staff and board, with little communication or real understanding of each other's roles, authority and functions. There seem to be no clear channels of communication within the Society and no clear means by which board members can know or understand the working of the Society or the problems and needs of staff, including foster parents. We note especially that Board were not formally informed of the Popen case until it was reported in the press (December, 1977). There seems to be a repressive atmosphere and indeed, we found some staff members we interviewed stating to us that they were hesitant to come because of fear of reprisals against them. Whether this is so or not is less important than the fact that the feeling was present and was stated in these terms. There seems to be little feeling of loyalty or committment to the organization.

We would like to think that the events of the Popen case could not be repeated today. However, we reserve opinion about this and note that three staff members of the Society told us about the apparent reluctance of the Society to take action when cases are referred. Two cases were cited to us. In one there were 12 complaints and referrals over a period of six months, the first being in July. Nine such calls were made before the Society visited, having referred the matter to the Lambton Health Unit. The first visit was made in November (no one home), and the child was finally apprehended in December. This occurred in 1976, wardship being granted in January, 1977. The committee recognizes that this was a verbal report and was unsubstantiated by evidence. The case records, however, can and should be checked.

We have gone into some detail in regard to the Society's role in the Popen case. We cannot, however, leave the impression that total responsibility rests with the Society. Responsibility for the events of the Popen case must be shared by other systems which impinge upon the Society. Having detailed the Society's role, we look briefly at some of the others.

a) The Ministry of Community and Social Services

One of the purposes of the Child Welfare Branch of the Ministry of Community and Social Services is to supervise the way in which the societies carry out their mandate. This is spelled out in The Child Welfare Act (Part 1, Section 2(a)) as follows:

The Director shall

a) advise and supervise children's aid societies;

b) inspect or direct and supervise the inspection of the operation and records of children's aid societies'

It would have been desirable had the Ministry had closer contact with the Society during this period.

Although we did not verify, we heard repeatedly of high case loads, lack of time on the part of staff and insufficient supervisory staff. We have noted the need for appropriate staff qualifications and for training programs. We suspect that the energies of the local director were channeled into budget rather than service considerations. We note that the Society has no accountant on staff. All of these considerations contribute to low staff morale and decreased effectiveness, and they are areas that require further examination, by the Board of Directors and the Ministry.

b) The Community

The community must also share in the responsibility for the death of the child. The Board of Directors of the Society is made up of representatives of the community and we were made aware through lack of attendance at meetings and apparent lack of interest in the work of the Society, of an apathy on the part of many members of the Board, and an apparent lack of interest in serving on the Board, on the part of the community.

A more serious concern is that the community seems to condone a certain level of child abuse, and citizens fail to report suspected incidents, perhaps because of conflicted feelings about privacy and parental rights. Whatever the reasons, we note that this child was seriously abused on many occasions and people in the community must have been aware, yet it went unreported. For example, in one instance a neighbour, in giving evidence at the criminal hearing, stated that she had heard Kim screaming for "five or ten minutes." She did nothing.

Recommendations

The committee's explorations in relation to the Popen case raise serious concerns. Our mandate was not to conduct a legal review, or were we constituted to do so. Sufficient observations, however, lead us to recommend to the Board of Directors that they request the Ministry of Community and Social Services to initiate a Judicial Enquiry without delay.

It is a further recommendation of the committee that the Ministry be requested to provide whatever professional staff may be necessary to assist the Society to carry out its mandate pending the results of the Judicial Enquiry.

This Report is respectfully submitted by the review committee.

(Mrs) Margaret Farina, BA, MSW, MEd., Chairman,
Associate Executive Director,
Ontario Association of Children's Aid Societies.

"Margaret Farina"

Mr. Bruce Heath, BA, MSW,
Supervisor,
Ministry of Community and Social Services.

unsigned

Mr. Arne Petersen, BA, MSW,
Director of Resources,
Family and Children's Services of London and Middlesex.

"Arne Petersen"

SCHEDULE 2-H

Reasons for Judgement
His Honour Judge Q.L. Nighswander
Delivered February 25, 1976

Judge:

Now first, the evidence that was accepted into the record from the charge against Mr. Popen under Section 41 of the Child Welfare Act as now a part of the evidence in this case as accepted by all parties and provided for under Section 40-3 of the Act, is that the child Kim Popen received severe injuries, some of these injuries as a result of Mr. Popen's responsibilities, and on his own admission, occurred while he was under the influence of alcohol. I have had the evidence of Dr. Singh and the hospital records which corroborate his evidence, that this child was examined and admitted to the St. Joseph's Hospital on the 22nd of March, 1975, and at that time the child had a fracture of the left arm. Dr. Singh stated that the mother's explanation of this fracture that the child had been injured while being dressed was not consistent with any such injury that he had observed as a paediatrician (sic). That was his evidence, that that was not an explanation that was acceptable to him. Then a further admission on the 31st of August where the child, on the evidence of Dr. Singh and the admitting nurse and the nurse on the ward where the child was, that this child was found to have a new fracture on the left arm, bruising on the left and right arm, bruising on the knees, a cut on the lip and bruising on the cheek, and Exhibits 1 and 2 illustrate some of these bruises and injuries. The bruising on the upper arms of the child was bruising that was around on both sides of the arm, and the explanation that this could have been caused by a fall is an explanation that seems physically impossible, for a person to be bruised on both sides of two arms. Dr. Singh stated than an explanation that was given to him was that the baby fell from the crib; he stated that babies can't pull themselves up at that age, and are not indeed to the point of walking or crawling out of a crib. Now, we have the mother's evidence that she took the child to the hospital when she observed this. She observed her husband while he was drinking, having ahold(sic) of the child; that the child fell from the crib since she was sitting on some kind of a rocker or some other kind of sitter in the crib, and fell out because the edge of the crib was down, and she found the child under the bed. Now, this could happen. There is no question about this. This could happen, but it certainly could not physically possibly cause all the injuries to the child. It could have caused one or two of the bruises, but it would not seem possible for a child to have bruises on both sides of its arms and its knees and two ankles and a cut lip from one fall. I am satisfied that the injuries to this child were caused - many of them at least - by mishandling by the people in whose charge the child was. Mr. Popen, the father, has admitted that some of this could have been caused by himself, and he pled guilty to a charge that accused him of this. The mother in her evidence has suggested that she did see her husband while drinking, holding the child. I can appreciate the mother and her difficulties in giving evidence against her husband when in fact this is what she would be doing, but we are dealing here with care of a child. I find that this child is in need of protection in accordance with Section 20(1)(b)(iii) of the Child Welfare Act; that this child's date of birth is the 11th of January, 1975; that the place where the child was taken into protection is the City of Sarnia and the religion of the child is Roman Catholic. Now, it is clear on the evidence that we have parents who have demonstrated that they are interested in their child. They have come to visit, and the description of their visits is not inconsistent with parents that were interested in their child; and it is also noted that it was the mother of the child that initiated medical care when the child needed it. However, loving and being interested in a child is not enough for any child. A child, to survive in this world, needs other kinds of care, and I am quite satisifed that this child received a number of injuries as a result of brutal handling on the part of the father. Maybe he didn't intend to harm the child, but that does not do anything for the child when the child receives injuries. For a child two months of age to have a broken arm from being dressed, I accept the evidence of Dr. Singh that this is completely inconsistent with any injury that could be sustained while a child is being dressed. Certainly a child probably could have strained muscles and so forth, but a fracture of an arm for a two-months child is consistent with very improper handling, as with the other bruises. Now, the Children's Aid Society today has suggested two months Society Wardship, and this is agreeable to the parents, but I am not satisfied that this is a sufficient length of time to be sure that proper steps have been taken to make this home safe for the child. The father has suggested and admitted that he has an alcohol problem and that this is the cause of all this trouble. If this is so, then before this child can be safe near this man, we have to have clear-cut evidence that this man has done something very concrete about his problem. If it is severe enough to cause this child this injury, then it is not going to be corrected overnight. Some time is necessary. On the other hand, I believe that these parents have a sincere interest in their baby, although they have demonstrated an unusual way, to date, in expressing it. I am, therefore, going to make an order today for Society Wardship for a period of six months. I am aware that the child has been in care for a length of time, but at the same time we have no evidence before us of what Mr. Popen has done, if anything, about his alcohol problem, and I am definitely going to note that he must give evidence that he has done something and that it is succeeding, before the Court will permit the child to return to its parents. This does not necessarily mean that the child will not be with its parents for a further six months, but simply means the Children's Aid Society have control for that period of time. I, therefore, am committing the child to the care and custody of the Children's Aid Society, City of Sarnia, County of Lambton, for a period of six months dating from today.

SCHEDULE 2-I

THE LAMBTON HEALTH UNIT

To: Nursing Department Date: June 16, 1978

From: Dr. Lucy M.C. Duncan

PROCEDURE RE CHILD ABUSE RECORDS

Please observe the following procedures in the interest of accuracy and confidentiality.

1. When child abuse or neglect is reported to us or suspected by our staff a family folder is to be set up at once.

2. Staff are to make a written record on a NCR memo of conversations, including telephone call, regarding the child.

   - one copy is for the family folder
   - one copy is to be given to Dr. Duncan for her Child Abuse Case File
   - one copy is to be retained by the nurse assigned to visit the case.

3. Nurse's Report of Examination of Child (Form N#7) is to be filed in Family File in Front Office, and a copy of Examination Report is to be given to Mrs. Harrison to take to Children's Aid Society.

4. Record on family file date case transferred to Children's Aid Society.

5. The nursing family record and the separate family folder are to be kept for ten years.

6. These confidential reports may only be disclosed with Dr. Duncan's permission.

Lucy M.C. Duncan.

THE LAMBTON HEALTH UNIT

GUIDELINES

Re: CHILD ABUSE CASES

C.A.S.

DR. DUNCAN

HOSPITAL CHILD ABUSE COMMITTEE

MRS. CAROL HARRISON

DISTRICT PUBLIC HEALTH NURSE

Referrals to The Lambton Health Unit come from concerned citizens, the schools, social agencies, the police, doctors, and the Hospital Child Abuse Committee.

Dr. Duncan is the Health Unit representative on the Hospital Child Abuse Team.

Mrs. Carol Harrison is Liaison Nurse between the Children's Aid Society and The Lambton Health Unit.

In Dr. Duncan's absence a delegate (Mrs. Harrison or Mrs. Dent) attends the Hospital Child Abuse Committee Meeting.

Dr. Duncan will copy the Hospital Child Abuse Committee Minutes to give to Mrs. Lefebvre so she may notify the Public Health Nurses who have suspected cases of abuse in their district. The Minutes then pass to Mrs. Harrison.

Letters to the Children's Aid Society are to be signed by Dr. Duncan and a copy given to Mrs. Harrison.

Referrals to The Lambton Health Unit and to Mrs. Harrison from the Children's Aid Society must be confirmed in writing (NCR acceptable) and replies from The Lambton Health Unit to the Children's Aid Society will be in writing.

LD/cc - April 13, 1978

THE LAMBTON HEALTH UNIT

CHILD HEALTH PROGRAMME

NURSE'S REPORT DATE OF VISIT ___________

REQUEST FROM: Hospital ____ Family Doctor ____ Police ____
Family Court ____ C.A.S. ____ School ____

CHILD'S NAME ___________________ Date of Birth _________________

ADDRESS ____

PARENT OR GUARDIAN ___________________ Telephone No. ___________

FAMILY PHYSICIAN ____

INSTRUCTIONS TO VISITING NURSE

1) Request child be undressed.
2) If a bruise, burn of other injury is present, the nurse is to state site and size of lesion on this report.
3) If child abuse or neglect is suspected, the nurse is to notify Dr. Duncan (or Nursing Director) immediately.

CLOTHING ____
EMOTIONAL STATE ____
NUTRITION ____
SKIN CONDITION ____
HEAD ____
NECK ____
CHEST ____
ABDOMEN ____
GENITALIA ____
BACK ____
BUTTOCKS ____
ARMS ____
HANDS ____
LEGS ____
FEET ____

COMMENTS OR EXPLANATION GIVEN ____
____

HEALTH COUNSELLING GIVEN ____

NURSE'S SIGNATURE ____

REFERRAL TO: C.A.S. _______ Hospital Child Abuse Team _______

LD/CC
May 25.78

LIAISON WITH CHILDREN'S AID SOCIETY

Objectives:

- To improve communication.
- To establish regular meetings with C.A.S. in order to make appropriate referrals.
- To participate in inter-agency conferences.
- To avoid over-lapping of services.
- To interpret the role and functions of C.A.S. and P.H.N.
- To consider and evaluate the variables which may influence the health status and social well-being of the child.
- To enhance the effectiveness of the delivery of services.
- To consider the factors that influence the development and implementation of a plan of action.
- To encourage attitudes and actions which facilitate the prevention of disease and will promote the optimum health of the child.
- It must be noted that the P.H.N.'s are guests in the homes they visit. The clients can refuse them entry, except where there is a Court Order.
- When a P.H.N. suspects child abuse, she must notify C.A.S. and Dr. Duncan/or Mrs. Lefebvre.

LD/cc
June 16, 1978

SCHEDULE 2-J

CHAPTER 8

LEGISLATION AND THE CENTRAL REGISTER

> "One of the greatest delusions of this world is the hope that the evils of this world can be cured by legislation."

The Central Register of Child Abuse, the hub of all legislation in this area, has been in operation since 1966. It is maintained by the Child Welfare Branch and is Ontario's first systematic documentation of child abuse. In the first four years of its operation, over 1,600 cases were reported. In about 4 per cent of the cases, the abuse was repeated. Charges were laid in 172 cases, and these resulted in 49 convictions.

The availability of such statistical information seems sufficient justification for the Register's continued existence. However, in the course of our study, it became evident that for statistical purposes alone the Central Register is of limited value. The reasons for this will be discussed below. It also became obvious from our inquiries that the information contained in the Register is rarely used by the local Children's Aid Societies. Since it is inadequate for research purposes, and apparently ineffective for service, should the Central Register be continued? Some comments on the past and future of Child Abuse Legislation, and a review of the research findings, provide our answer to this question.

CHILD-ABUSE LEGISLATION

The Child Welfare Act (Ontario) 1965 states:

Sec. 41(1) Every person having information of the neglect, abandonment, desertion or physical ill-treatment of a child shall report the situation to a Children's Aid Society or Crown Attorney.

(2) Subsection 1 applies notwithstanding that the information is confidential or priviledged and no action shall be instituted against the informant unless the giving of the information is done maliciously or without reasonable or probable cause.

Physicians are not specifically mentioned in Section 41, and there is no penalty for failure or refusal to report cases of abuse.

The term "physical ill-treatment" can be widely interpreted and is not defined in this section. However, Section 19, dealing with Protection and the Care of Neglected Children, does appear to cover physical abuse.

> "Child in need of protection" means: Section 19 (xii) - A child whose life, health or morals may be endangered by the conduct of the person in whose charge he is."

The Canadian Criminal Code, Section 197, could also be used to presecute parents (or anyone in loco parentis) for failing to provide the necessities of life for any child under the age of sixteen. Other sections of the Criminal Code make it a criminal offence to assault or cause bodily harm to any person.

REPORTING IN PRACTICE

We found widespread differences between local Children's Aid Societies in the kinds of cases they reported to the Central Register. Variations in the use of the Register may be partly explained by the different criteria of child abuse. Metro Toronto C.A.S., for example, rarely if ever reported cases of sexual assault or severe over-disciplining. Ottawa C.A.S. reported all such cases. The Director of another C.A.S. explained that cases were only reported by his agency after a physician's examination had confirmed that the child's injury was the result of deliberate abuse. These are only a few instances of how the Register is used by different societies.

There is need of a generally accepted definition of child abuse so all such instances can be reported in a standarized way. There is also need of a time-limit for the reporting of cases. Some agencies report cases immediately, others delay several weeks. Even in the recording of data, the margin for error is too large. There is not even a standard way of writing dates, so an event occurring on October 6th, 1969, may be annotated as 10.6.69 and then recorded as occuring on June 10, 1976, - a trifling matter perhaps? A serious source of error in duly reported cases was the failure of some Societies to provide all the information required of them. This accounts for gaps in some tables on such crucial points as age and sex of child, who reported the case, and so on. If more care was taken in accurately reporting cases in the past, the value of the Central Register's data would be correspondingly higher today.

CROWN ATTORNEYS

The Child Welfare Act, Section 41, provides an option to those reporting child abuse. Cases may be reported either to a Children's Aid Society or to a Crown Attorney. The C.A.S. involvement has already been described. What is the role of the Crown Attorney?

Through the office of the Director of Public Prosecutions Crown Attorneys were asked to provide information on the number of cases of child abuse reported to them in 1970. Ten positive replies were received, yielding 30 cases in all. The next step, to collect more detailed information on these 30 cases, was - to say the least - unrewarding. Only one of the Crown Attorneys consulted could assist us. Incredible though it may seem, we were repeatedly informed that no records of reported cases of child abuse were kept on hand. The C.A.S. involved appeared to have no knowledge of the Crown cases, and, as far as can be ascertained, the Crown Attorneys did not report the cases to the Central Register. This unfortunate gap in reporting needs to be closed. Crown Attorneys should report all cases of child abuse brought to their attention to the C.A.S. and to the Central Register. If these cases are reported to the C.A.S., they may be followed up; if they are reported to the Central Register, there will be centralized listing of all reported abuse cases available to social workers and authorized researchers.

THE SUPERVISING CORONER'S OFFICE

The Crown Attorneys do not as a matter of course report cases of abuse to the Central Register. Do the Coroners in Ontario report the battered child deaths that are known to them? By courtesy of the Ontario Supervising Coroner, the records of 46 suspected or confirmed cases of abuse leading to death, which occurred between January 1965 and May 1971, were made available to us for study. Only nine of the 46 cases were reported to the Register. This is a most serious omission. In at least 18 of the 46 cases, young brothers and sisters were also at risk.

Two cases, neither of them reported to the Register, demonstrate the problem.

(1) The mother was pregnant at the time of her chld's (sic) death. She had two other children, one of whom was reported to have a black eye and a bruised back.

(2) The father was jailed for assaulting and killing his seven-week-old baby. A year earlier, he was given a suspended sentence for mistreating another child who subsequently died of pneumonia.

In conclusion, the following points must be made about the Central Register:

1. Not all cases of child abuse are being reported by the responsible agencies.
2. When cases are reported, the data are frequently incomplete.
3. The fact that the staff of the C.A.S. makes only sporadic use of the Register suggests

that the staff places little confidence in its value.

4. If the Register is to serve a useful function, guidelines defining child abuse will have to be issued to all reporting agencies.

5. In the future the staff of the Child Welfare Branch must take a more zealous approach to matters of documentation to improve the quality of the Register.

6. Child abuse is coming to be regarded as a gross symptom of family distress, rather than a serious result of an individual's pathological condition, so the Register itself should be reorganized to reflect this. In the future, emphasis should be placed on information relating to family function and dysfunction instead of on the isolated abusive episode.

DO WE NEED A CHIILD (sic) ABUSE REGISTER?

"The need to discover and identify child victims of abuse is the compelling reason for devising a case-finding tool such as the reporting law." Thus does the American Humane Association's publication, "Child Abuse Legislation in the 1970's" stress the need for a Central Register. But the Association's publication provides little evidence that the Registers are being used for the purposes for which they were originally designed (9).

Those who defend the Register stress the fact that the Register records each instance of abuse to a child. To avoid detection abusive parents often take their children to a different hospital or doctor when medical attention is required. The Central Register should alert the responsible authority of repeated abuse. In actual practice, the Register is rarely used for this purpose. Indeed, doctors not only fail to report cases to the Register, they hardly seem to be aware of its existence.

The reluctance of physicians to use the Register is well known. Some are anxious to protect the parent from what they regard as the punitive intervention of the C.A.S.; others want to avoid court proceedings. Legally the physician must report all instances of abuse to the Register, so this issue would be sharpened if and when a penalty for failing to report were introduced (10).

Mandatory reporting has already been proposed by Mary Van Stolk, who recommended a fine of $500 or three months of imprisonment or both for erring physicians. Subsequently, she has increased the recommended fine to $1,000. But legislators are unlikely to adopt such a proposal. In addition, the knowledge that physicians face fines and penalties might deter parents from securing the necessary medical attention for their injured offspring.

SCHEDULE 2-K

Extracts from The Police Act
R.S.O. 1970, Chapter 351

PART VI
GENERAL

Constables empowered to act throughout Ontario

54. Every chief of police, other police officer and constable, except a special constable or a by-law enforcement officer, has authority to act as a constable throughout Ontario. R.S.O. 1960, c.298, s.46; 1966, c.118, s.14.

Duties and powers of members of police forces

55. The members of police forces appointed under Part II, except assistants and civilian employees, are charged with the duty of preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and laying informations before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders, and have generally all the powers and privileges and are liable to all the duties and responsibilities that belong to constables. R.S.O. 1960, c.298, s.47; 1966, c.118, s.15

SCHEDULE 2-L

CHILDREN'S AID SOCIETY, SARNIA
POLICIES FOR CHILD CARE SERVICES

1. These services are for children whom the Society has taken into its care, either with the parents' consent and approval, or by apprehension as provided in Section 20 (Child Welfare Act, 1965):-

   > "A constable or other police officer, the Director, a local director or a person authorized by the Director or by a local director may take without warrant to a place of safety any child apparently in need of protection and detain the child there until the child can be brought before a judge, or he may apply to a judge for an order requiring the person in whose charge the child is to produce the child before a judge at the time and place named in the order."

2. These services include suitable planning for the children in the care of Society, placement and supervision of children in foster homes or any other suitable facilities approved by the Society. Adoption is included in a separate section.

3. The Society shall be responsible for providing for the total development of the child, such as a good parent would.

4. In order to fulfill this responsibility the Society shall work in co-operation with foster parents, staff of institutions and all other community resources in the best interests of the child.

ADMISSION TO CARE

The needs of the child shall be the principal criterion(sic) for the decision whether to remove him from his parents and provide another type of care.

The Society shall supervise wards of other Societies placed in this area when requested by the parent Society or by the Child Welfare Branch.

PLANS FOR CHILD

The Society endorses the plan to work with a child's parent(s) where practicable, with the object of re-establishing the home for the child.

For Crown Wards, the Society shall, wherever possible and advisable, arrange for adoption and if this is not possible or advisable, arrange for other satisfactory permanent care.

The Society shall, to the best of its ability, assist the child to prepare adequately for leaving Crown guardianship.

FOSTER HOME FINDING

(a) Applications to become foster parents shall be accepted from people living in the City of Sarnia or County of Lambton.

(b) The Foster Homefinder shall be responsible for the Home Studies of applicants. He shall be responsible for bringing to the attention of his supervisor the areas of need. The Local Director shall keep the Board of Directors informed of the situation relative to this area of work and the Board of Directors, Local Director and staff will study the situation with a view to implementation of plans to meet the needs.

The aim of this department shall be to have approved foster homes available for all children.

(c) The rate of board paid to foster parents shall be reviewed yearly by the Child Care Committee which shall report their findings to the Board of Directors and make recommendations on which the Board shall act.

SPENDING MONEY

Spending allowances shall be provided to foster parents for the children in their care - the amount to be determined by the Board of Directors.

CLOTHING

The Society shall be financially responsible for clothing for the children in its care. The foster parents shall be encouraged to dress a ward on a comparable standard with their own home and community. The Society shall ensure that all children in its care are adequately clothed.

MEDICAL CARE

Each child admitted to care shall have a medical examination at the earliest possible time after he is taken into care and not later than one week after admission, if a doctor's appointment can be secured.

After the initial examination, babies shall be seen as often as required by the doctor or in case of illness. Older children shall have a complete medical examination once a year and shall receive such other medical care as is required from time to time.

DENTAL CARE

All children admitted to care who are three years of age and over shall have dental examinations and care as soon as dental appointments can be made. Thereafter yearly examinations and necessary care shall be arranged.

MENTAL HEALTH SERVICES

Psychological and psychiatric assessments and treatment shall be provided for children in care, using such consultants and services as are available to the community.

EDUCATION

Every ward placed in a foster home or other suitable place according to his needs, shall receive an education and training in accordance with the laws of Ontario and in keeping with his intellectual capacity and ability.

Where a ward is dependent for educational purposes after his 18th birthday, The Child Welfare Act, 1965, provides for wardships to be continued until his 21st birthday.

The Society shall be financially responsible for school supplies not provided by the school.

RELIGIOUS TRAINING

Wards shall be given the opportunity to participate in the training and activities of their religious faith.

SCHEDULE 2-M

CHILDREN'S AID SOCIETY, SARNIA POLICIES IN REGARD TO FAMILY SERVICES

1. Family Services are services to families who have problems with which they need help. These problems may be related to finances, family relationships, child behaviour and environment.

2. Family Services may be divided into two parts, both required by Section 6 (2), The Child Welfare Act, 1965:-

   Part 1 (a) Investigating allegations or evidence that children may be in need of protection.

   and

   (b) Protecting children where necessary.

   Part 2 Services for Families.

   Providing guidance, counselling and other service to families for protecting children or for the prevention of circumstances requiring the protection of children.

3. Families Served

   Families are eligible for the services of the Society if:-

   (a) There are children of the union in the home under sixteen years of age, or the woman is expecting a child of the union.

   (b) The parents are legally married, or are living in common-law union, or there is only one parent in the home. (If in the common-law union, the service requested is similar to that given to Unmarried Parents, it will be transferred to the category of Unmarried Parents).

(c) When requested, counselling services will be given to previous wards who are single, if it is felt the service will be of value to the ex-ward. If married they will be eligible for service in the same manner as any other family.

4. Service to Families

The case worker assigned to the case shall provide casework services to the family, which will include counselling, using agency resources (the Society has donation funds on occasions which are not ear-marked) and community resources. Where indicated, group counselling services shall also be provided.

Except in cases where the need for protection of a child is present, as defined in The Child Welfare Act, the family may withdraw from the service at any time and the agency may discontinue service if the client shows an inability to respond to the service.

5. Standards of Service

(a) Standards of service are laid down in the Regulations of The Child Welfare Act, 1965 as follows:-

Section 12 (1) Every children's aid society shall record any complaint respecting children in need of protection within twenty-four hours of its receipt.

(2) Within twenty-one days after a complaint is recorded, the society shall investigate the complaint and record a report determining whether or not the child is in need of protection and, if so, including a tentative plan for the welfare of the child, and the steps taken to implement the plan and, where the child is not taken into protective care, the case shall be reviewed not later than

sixty days after the complaint was recorded.

(b) The policy of this Society shall be that an immediate investigation shall be made when the complaint indicates that the child(ren) is/are in immediate need of protection. Any other complaint shall be investigated within three working days. In cases of mutual agreement between the client and the worker, the service may be initiated after three working days.

6. Placement Services

Placement of a child outside his own home shall be undertaken only in circumstances where no solution can be found for meeting the needs of the child in his own home, and only where it is in the best interests of the child.

7. Types of Care

Wardship: Under The Child Welfare Act, 1965, where there is apparent evidence of a child needing protection under the satutory definition of the term, application may be made to the Court for a hearing to determine if the child is in need of protection. This shall be done within five days of apprehension. The Judge may make an order returning the child to his parents, (this may be with or without Children's Aid Society supervision), making the child a ward of the Society for up to one year (Society Ward), or making the child a ward of the Crown. Further orders may be made in regard to a Society Ward - such wardship not to extend beyond two years. If it extends to two years, the child must either be returned to his parents or the person to whose charge he was before coming into care, or be made a Crown Ward.

Non-Ward Care: Non-Ward care may be considered for short-term care, e.g. parent in hospital or in some cases of children being placed on adoption.

8. Services to Parents during Society Wardship

During the period when a child is a Society Ward, a case worker shall offer services to the parents to help them establish a home suitable for the children to be returned to them. Service to the family shall, wherever possible, be continued after the children are returned home.

9. Miscellaneous Services

Official Guardian Investigations: These shall be carried out at the request of The Official Guardian in divorce cases where there are children under sixteen years of age, or children over sixteen years of age still attending school full-time.

Family Allowance Investigations: These shall be carried out at the request of the Family Allowance Division of the Department of Health & Welfare.

Out of Town Enquiries: When requests for service are received from agencies beyond the jurisdiction of this Society, this service shall be given.

SCHEDULE 2-N

Extracts from The Probation Act
R.S.O. 1970, Chapter 364

Appointment of probation officers
R.S.O. 1970, C.386
JURISDICTION

1.-(1) Such probation officers as are considered necessary for the purpose of this Act shall be appointed under The Public Service Act.

(2) Every probation officer appointed in accordance with subsection 1 is a probation officer in and for the Province of Ontario and shall perform his duties in such part of Ontario as is assigned to him from time to time by the Minister of Correctional Services 1965, c. 103, s.1(1)

Status

(3) A probation officer shall be deemed to be an officer of every court in the part of Ontario to which he is assigned and shall carry out the directions of the judges presiding in such courts. R.S.O. 1960,c.308,s.1(4); 1965,c.103,s.1(2), amended.

Powers and duties

2.-(1) It is the duty of a probation officer and he has power with regard to any person convicted at a sittings of the Supreme Court for the trial of criminal cases, or at the general sessions of the peace, or at the county judges' criminal court, or at a provincial court in the part of Ontario to which he is assigned.

(a) to procure and report such information as to the antecendents, family history, previous convictions, character of employment and other information respecting any person so convicted as the court requires;

(b) to supervise under the direction of the court before whom such person was convicted the employment, conduct and general condition under which the person so convicted may be placed during the period of probation imposed by the court;

(c) to see that any person so convicted reports from time to time as the court prescribes, and to report to the court if the person so convicted is or is not carrying out the terms on which sentence is suspended, and so see that such person, in case of default, is brought again before the court for sentence;

(d) to see that any person so released on suspended sentence duly makes restitution and reparation;

(e) to see that any person so convicted while on probation duly carries out any order of the court requiring him to make due provision for the support of his wife and any other dependants for whom he may be liable;

(f) to do all such other things as are directed by the court or by the regulations made under this Act.

(2) In the performance and exercise of the powers imposed by or under subsection 1, a probation officer is ex officio a provincial police constable. R.S.O. 1960,c.308,s.3, amended.

To be ex officio provincial constable

Probation on certain conditions

1953-54 c.51(Can.)

5.-(1) Where a person is charged with having committed an offence against any statute of Ontario, the court before which such person is brought for trial may make such inquiries as it considers proper as to the character and reputation of the person charged and as to whether or not he had been previously convicted of any offence under the Criminal Code (Canada) or against a statute of Ontario, and if it appears that, regard being had to his age, character and antecendents, it is expedient that he be released on probation of good conduct, such court may release him under one or more of the following directions and conditions:

recognizance

1. That such person enters into a recognizance with or without sureties to keep the peace and to be of good behaviour.

probation

2. That such person be placed upon probation for such period and under such circumstances as the court before which he is brought prescribes.

report to probation officer

3. That such person shall report from time to time during such period of probation to any probation officer that the court designates.

supervision and direction

4. That such person shall be under the supervision and direction of such probation officer during the period of probation, and shall obey and carry out the instructions and directions of the probation officer.

payment of costs

5. That such person pay the costs of the prosecution or some portion of the same within such period and by such instalments as the court before which he is brought directs.

6. That such person make restitution and reparation to any person or persons aggrieved or injured by the offence charged, for any actual damage or loss thereby caused. restitution

7. That such person while on probation be ordered to provide for the support of his wife and any other dependant or dependants for whom he is liable. support of family

8. That such person perform and carry out any other direction and condition that the court before which he is brought prescribes and considers proper to impose. other conditions and directions

(2) The court before which such person is brought, before directing the release or discharge of any such person, shall be satisfied that such person or his surety has a fixed place of residence or regular occupation in the county or place for which the court acts, or in which such person is likely to live during the period named for the observance of the conditions. Place of abode of person charged to be in jurisdiction

(3) If any court having power to deal with such person in respect of the charge against him, or if any court is satisfied by information on oath that such person has failed to observe any of the conditions of his recognizance, or has failed to observe and perform any direction or condition made in reference to probation or otherwise, a new information may be issued against such person for the original offence charged, and in addition an information may also be issued against such person for a breach of any of the directions and conditions so imposed. Failure to carry out conditions

(4) Upon summary conviction of a breach of any of the directions and conditions so made, such person, in addition to any penalty that may be imposed for the original offence, is liable to a fine of not more than $50. R.S.O. 1960,c.308,s.6, amended. Penalty

SCHEDULE 2-O

INV. 75-287-i

The Sarnia Police Force

INVESTIGATION REPORT

Date: June 16, 1975
Time: 2:30 p.m.
Officer: S/Sgt. Allan
Name of Complainant: Dr. Jumean
Address: 145 Wellington Street
Phone: 337-3729

Complaint: Battered Child

Details:

1. At the above time and date, Dr. Jumean called the Morality Office to report a battered child. He stated that a person, who wished to remain anonymous, brought a Kim Popen, DOB: January 11, 1975, father, Annals Popen, mother, Jennifer Popen, into his office this date. Dr. Jumean stated that approximately 6 weeks ago, this child was hospitalized with a broken arm. At that time the mother stated that the child fell. Approximately 3 weeks ago, the child was treated for a respiratory ailment and at that time the doctor observed it had a black eye. At this time the child was brought to his office and it had a cut lip and severe bruises over the face, neck and buttocks.

2. Heresay(sic) information received by the doctor was to the effect that the father comes home drunk and beats up the mother who in turn beats up the child for retaliation.

JRA

3. The Popen's address is 240 Devine Street, Sarnia.

4. On June 17, 1975 at 10:20 a.m., P.C. Gander went to the Children's Aid Society and talked to a Mrs. Dick and explained to her that we wanted their assistance in picking up the Popen girl. She agreed we should and sent with me a Sandy Saul who works for the Children's Aid and a Win Hoad who works as a case agent.

5. On June 17, 1975 at 10:45 a.m. we went to 240 Devine St. and learned that the Popen's (sic) no longer live there.

6. A check with Dr. Jumean revealed that the baby is at 548 Devine St., at a sister-in-law's.

7. At 11:10 a.m., this date, the two lady's (sic) and P.C. Gander talked to a Mrs. Cecil Popen of 548 Devine St. We also saw the baby girl, Kim Ann Marie Popen, and we could not see the marks that were supposed to be on her face and neck and buttocks. The baby was well cared for and was very quiet while we were there.

8. At 11:30 a.m., this date, the baby's mother, Jennifer Popen, and father, Annals Popen of 263 S. Brock St., phone 344-3584, came into the sister-in-law's house. Sandy Saul talked to the mother and calmed her down, assuring her that if she wanted to keep the baby she would have to take care of it properly or she would make sure she got the baby from her - to protect her. Mr. Popen stated that all the injuries that have been stated are not out of neglect, that it was an accident. Sandy Saul felt in her own mind that the baby appeared to be well taken care of and that it would be better to leave things as they were for now. She told Jennifer that she would come around and see her next week and help her. Jennifer is only 18 years old and doesn't seem to be a motherly type.

9. Sandy Saul will contact us next week and let us know what the reaction and response is of Mrs. Jennifer Popen.

CJG

10. On July 2, 1975 at approx. 10:00 a.m., after checking with Mrs. Sandy Saul at the Children's Aid Society, it was learned that it had been turned over to another worker, a Harold Carter. The reason was that it was going to take a lot of time to help Mrs. Popen and her emotional problems.

11. On August 31, 1975 at 3:10 p.m., Mrs. Betty Hewitt, nurse in the Children's Ward of St.

Joseph's Hospital, notified the Sarnia Police Dept. of a battered child that had been admitted to the ward.

12. Upon my arrival to St. Joseph's, I was met by P.C. Kennedy and Mrs. Hewitt. She informed me that the child was Kim Anne Marie Popen, DOB: Jan. 11/75. Kim Popen had been admitted to St. Joseph's at 1:25 a.m., August 31, 1975.

13. Upon speaking with the two doctors that examined the child, Dr. Thorp, 322 Wellington St. and Dr. Singh, Sarnia Medical Arts Bldg., they both felt that the child had been misused or battered.

14. P.C. Turner was notified and pictures of the child were taken.

15. P.C. Wyville looked at the child and could see that both elbows were bruised and swollen, both ankles were badly bruised, the left check was bruised and the left side of her upper lip was cut and swollen.

16. At 4:00 p.m., P.C. Wyville spoke with the child's mother, Jennifer Angelle (sic) Popen, DOB: Sept. 7, 1957, 287 Devine St., at St. Joseph's Hospital. Mrs. Popen stated that Kim had fallen out of the crib on August 29, 1975 and again on August 30, 1975. She also stated that Kim was in the hospital on March 22, 1975 with a broken arm. This had occurred when she had fallen out of the walker.

17. P.C. Wyville notified the Children's Aid from St. Joseph's Hospital. Mrs. Dick from the Children's Aid came to the hospital and spoke with Mr. and Mrs. Popen and P.C. Wyville. The child was signed over to the Children's Aid at this time.

18. Mr. and Mrs. Popen were advised by P.C. Wyville that an investigation would be held and possible charges laid.

BAW

SCHEDULE 2-P

The Child Welfare Act, 1978 Extracts
Ontario Regulation 389/79 Extracts
Ontario Regulation 388/79 Extracts

Interpretation

47. -(1) For the purposes of this section and sections 49, 50, 51 and 52, "abuse" means a condition of,

(a) physical harm;

(b) malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death; or

(c) sexual molestation.

Desertion, abuse, etc., of child

(2) No person having the care, custody, control or charge of a child shall abandon or desert the child or inflict abuse upon the child or permit the child to suffer abuse.

Further proceedings as to child

(3) A court may, in connection with any case arising under subsection (2), hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection. 1978, c.85, s.47.

Leaving child

48. -(2) No person having the care, custody, control or charge of a child shall leave the child without making reasonable provision, in the circumstances, for the supervision, care of safety of the child.

Further proceedings as to child

(2) A court may in connection with any case arising under subsection (1) hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection.

Onus

(3) Where a person is charged with contravening subsection (1), the onus of establishing that reasonable provision was made in the circumstances for the supervision, care or safety of the child where the child is under the age of ten, rests with the person charged. 1978, c.85, s.48.

Reporting abuse of child

49. -(1) Every person who has information of the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child shall forthwith report the information to a society.

Duty of professional to report

(2) Notwithstanding the provisions of any other Act, every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse that may have been caused or permitted by a person who has or has had charge of the child shall forthwith report the suspected abuse to a society.

Privilege abolished

(3) This section applies notwithstanding that the information reported is confidential or privileged and no action for making the report shall be instituted against any person who reports the information to a society in accordance with subsection (1) or (2) unless the giving of the information is done maliciously or without reasonable grounds to suspect that the information is true.

Solicitor and client privilege

(4) Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor's client. 1978, c.85, s.49.

Interpretation

52. -(1) In this section,

(a) "Director" means an employee of the Ministry appointed by the Minister for the purposes of this section;

(b) "registered person" means a person named in or otherwise identifiable from the register established under subsection (3), but does not include the person or persons making the report to a society pursuant to subsection 49 (1) or (2) who are not themselves the subject of the report.

Society to report information concerning abuse

(2) Every society that receives information under section 49 concerning the abuse of a child, including a child in the care of a society, shall forthwith, after the information is verified in the manner determined by the Director, report the information to the Director in the prescribed form, and no action or other proceeding for damages shall be instituted against any officer or employee of a society for any act done in good faith in the execution or intended execution of any duty imposed on the society under this subsection or for any alleged neglect or default in good faith of such duty.

Register

(3) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information received by societies under section 49 concerning the abuse of children, but the register shall not contain any information that has the effect of identifying the person or persons making the report to a society pursuant to subsection 49 (1) or (2) unless such person or persons are themselves the subject of the report.

Information confidential

(4) Subject to subsections (5) to (10) and notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the register established under subsection (3).

Exceptions

(5) A coroner, a legally qualified medical practitioner or police officer authorized in writing and directed by a coroner for the purposes of an investigation or inquest under the Coroners Act and the Official Guardian or a person duly authorized as the agent of the Official Guardian may inspect or remove the information maintained in the register established under subsection (3) and may disclose or transmit that information only in accordance with the authority vested in the person and in the case of the Official Guardian or his duly authorized agent only for the purposes of section 51.

R.S.O. 1980, c.93

Idem

(6) The Director and the following persons with the approval of the Director, and subject to such terms and conditions as the Director may impose, may inspect or remove or permit the inspection or removal of the information maintained in the register and may disclose or transmit or permit the disclosure or transmission of that information to any person referred to in subsection (5) or to any other person referred to in this subsection:

1. A person who is on the staff of,
    - i. the Ministry,
    - ii. a society, or
    - iii. a child protection agency recognized by a jurisdiction outside Ontario.
2. A person who is or may be providing services or treatment to a registered person.

Idem

(7) A person who has the written approval of the Director and who is engaged in bona fide research may inspect the information referred to in subsection (4) but shall not use or communicate the information for a purpose other than research, academic pursuits or the

compilation of statistical data and shall not communicate any information that has the effect of identifying any person named in the register.

Idem

(8) A registered person or the registered person's agent may inspect the information maintained in the register, but shall not inspect information that refers to persons other than the registered person.

Idem

(9) A legally qualified medical practitioner who is approved by the Director may inspect information referred to in subsection (4) that is approved by the Director.

Idem

(10) The Director or a person approved by the Director who is on the staff of the Ministry may expunge a name from the register or otherwise amend the register pursuant to a decision of the Director or as prescribed by the regulations.

Register in-admissible

(11) The register established under subsection (3) is inadmissible in evidence for any purpose in any proceedings, except,

(a) to prove compliance or non-compliance with any of the provisions of this section;

(b) in an appeal made under subsection (19);

R.S.O. 1980, c.93

(c) in proceedings under the Coroners Act; or

(d) in proceedings referred to in section 51.

Request for a hearing

(13) A person to whom a notice is given under subsection (12) may request the Director to expunge from the register the registered person's name referred to in the notice or to otherwise amend the register.

Hearing

(14) Where the Director receives a request under subsection (13), the Director shall hold a hearing before deciding to refuse the request to expunge the registered person's name from the register or to refuse the request to otherwise amend the register, and the provisions of the Statutory Powers Procedure Act apply, with necessary modifications, to the hearing.

R.S.O. 1980, c.93

Parties

(15) A registered person to whom notice is given under subsection (12), the society that received the information concerning the registered person under subsection 49 (1) or (2) and such other persons as the director may specify are parties to the hearing.

Notice

(16) The Director shall cause notice of the hearing to be given to the parties to the hearing at least ten days before the hearing is held.

Decision of Director

(17) Where the Director, after holding a hearing, determines that the information in the register with respect to a registered person should not be in the register or that the information is in error, the Director shall, subject to subsections (19) and (20), cause the registered person's name to be expunged from their register or otherwise cause the register to be amended, as the case may be, and the Director may order that a society's records be amended to reflect the Director's decision.

Delegation of authority to hold a hearing

(18) The Director may authorize any other person to hold a hearing required under subsection (14) and where such person is authorized by the Director to hold the hearing, the person shall exercise the powers and duties of the Director under subsections (14) to (17).

Appeal

(19) Any person who is a party to the hearing may appeal the decision made pursuant to subsection (17) to the Divisional Court.

Decision of Divisional Court

(20) The Divisional Court may affirm the decision appealed from or may rescind the decision and refer the matter back to the Director or the person authorized by the Director under subsection (18), as the case may be, to be disposed of in accordance with such directions as the Divisional Court considered proper under this section, and the Director or the person authorized by the Director shall give effect to any direction given by the Divisional Court under this subsection.

Record of proceedings at hearing inadmissible

(21) The record of proceedings in any hearing held under subsection (14) or in any appeal under subsections (19) and (20) is inadmissible in evidence in any other proceedings for any purpose except proceedings under clause 94 (1)(c) and subclause 94 (1)(f)(iv). 1978, c.85, s.52.

Ontario Regulation 388/79
Under The Child Welfare Act, 1978

26. Where the Director who maintains the register established under subsection 3 of section 52 of the Act receives an inquiry from a society under subsection 1 of section 8 of Ontario Regulation 389/79, the Director shall forthwith notify the society whether any person referred to in the information received by the society under section 49 of the Act has been previously identified in the register, the date of any such prior identification and the society or other agency that reported the prior identification. O. Reg. 388/79. s.26.

27. -(1) A report by a society to the Director of verified information concerning the abuse of a child made under subsection 2 of section 52 of the Act shall be in Form 6.

(2) The Director may extend the period of time prescribed in subsection 2 of section 8 of Ontario Regulation 389/79 where, in the opinion of the Director, exceptional circumstances justify the extension.

(3) Where a case concerning the abuse of a child has been reported under subsection 2 of section 52 of the Act and the case has not been closed by a society, any further report on the status of the case required under subsection 3 of section 8 of Ontario Regulation 389/79 shall be made in Form 7 by the society to the Director maintaining the register. O. Reg. 388/79, s.27.

28. -(1) The information reported to the register under subsection 2 of section 52 of the Act shall be recorded in the register in Form 8.

(2) Information in the register established under subsection 3 of section 52 of the Act shall be maintained in the register for at least twenty-five years unless the information has been previously expunged or amended pursuant to a decision by the Director made under subsection 10 of section 52 of the Act. O. Reg. 388/79, s.28.

Ministry of
Community and
Social Services
Ontario

Form 6
The Child Welfare Act, 1978

Report to Child Abuse Register

Please print clearly or type. See reverse side for detailed instructions.

Identification of Child

Last Name	Known as (if applicable)	
First Name(s)	Sex ☐ M ☐ F	Birthdate day month year

Identification of Alleged Abuser(s)

Last Name	Known as (if applicable)
First Name(s)	Age

Mailing Address

Last Name	Known as (if applicable)
First Name(s)	Age

Mailing Address

Relationship to this child
☐ Father ☐ Mother ☐ Sibling ☐ Other relative ☐ Unrelated

If UNRELATED, specify
☐ C.L. Parent ☐ Step-parent ☐ Foster Parent ☐ Other (describe)

Indications of Abuse

☐ Abrasions
☐ Bruises
☐ Dislocation
☐ Internal injuries
☐ Burns/Scalding
☐ Fractures
☐ Subdural Haematoma
☐ No visible injuries
☐ Malnutrition
☐ Poisoning
☐ Drug/Alcohol abuse
☐ Sexual molestation
☐ Incest
☐ Mental ill health (describe)
☐ Other (specify)

Incident

Date of Incident day month year	☐ Date not known	☐ Previous Incident	Date Incident reported to C.A.S. day month year	Number of children under 16 yrs. of age living at home at time of incident
Place of Incident ☐ Child's home ☐ Other (specify)				Did Child die? ☐ Yes ☐ No

Previous reported abuse of child by this or any other alleged abuser(s) ☐ Yes ☐ No
If Yes, state jurisdiction number of reporting C.AS.

Person(s) with whom Child living at time of incident

Last Name	Known as (if applicable)	
First Name(s)	Maiden Name (if applicable)	Age
Last Name	Known as (if applicable)	
First Name(s)	Age	

Relationship to Child
☐ Parent ☐ C.L. parent ☐ Step-parent ☐ Foster parent ☐ Relative ☐ Other (describe)

Previous C.A.S. involvement with Child/Family

Has the C.A.S. been involved with this Child or Family before?	If yes, - is this an open protection case?	– is this a closed protection case?	– is this a Foster Child?
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

Please see reverse side

Reporting Society

Name of Society	Jurisdiction No.	Date
Name(s) of Caseworker(s)	Authorized Signature	

20-00-170 (7/79)

Action taken on behalf of the Child

Medical

Examined by a Physician ☐ Yes ☐ No	Examined by a Registered Nurse ☐ Yes ☐ No	Child hospitalized ☐ Yes ☐ No	If YES, for ☐ medical assessment ☐ medical treatment

C.A.S.

Present status
☐ Investigation proceeding ☐ Investigation completed ☐ Continued supervision ☐ Other (specify)

Child's present whereabouts
☐ Home ☐ Hospital ☐ In care ☐ Other (specify)

If HOME, is alleged abuser still present? ☐ Yes ☐ No	If NOT AT HOME, was Child apprehended? ☐ Yes ☐ No	If ELSEWHERE, was Child placed by parent(s)? ☐ Yes ☐ No	Other children taken INTO CARE? ☐ Yes ☐ No	If YES, number

Court proceedings

Charges laid against alleged Abuser(s) ☐ Yes ☐ No ☐ Pending	If YES, ☐ Criminal Code ☐ The Child Welfare Act, 1978

If YES, specify charges

Status of case ☐ Care by agreement*	Application for protection made ☐ Yes ☐ No	If YES, date day month year	☐ On adjournment*	☐ Application dismissed	☐ Supervision*	☐ Society Wardship	☐ Crown Wardship

*Child in care and custody of (name)	Referred to ☐ Another C.A.S. in Ontario (specify Society's Jurisdiction No.) ☐ Outside Ontario

This form is to be filed with the Register within 14 days after the Children's Aid Society has verified the information of suspected abuse. Each section is to be completed, unless the information is unavailable or considered unreliable.

Any omissions or errors in the initial Report may be addressed in the follow-up report (Form 7) (20-00-171).

Identification of alleged abuser(s)

If the child abuse is classified as neglect, this category may be omitted unless responsibility for the care of the child is clearly that of one individual (e.g., mother at home with child, single parent).

Identification of alleged abuser(s) may be omitted if the identity of the alleged abuser is uncertain.

Indications of Abuse

A diagnosis of mental ill health may be made by a qualified social worker, preferably in consultation with a registered psychologist or psychiatrist.

Incident

Date Not Known - addresses malnutrition, dehydration, poisoning, etc., where a specific date cannot be established.

Person(s) With Whom Child Living at Time of Incident

Name of any Parent substitute - refers to the person with whom child was residing at the time of the incident. A baby-sitter, if not in constant live-in contact with a child, is not a parent substitute.

Previous Incident - you may not be able to specify dates of previous incidents because of their repetition over a considerable time period (e.g., repeated incidents of sexual abuse reported months or years after the first incident). In such cases, this category may be omitted.

Number of Children under 16 years of age living at home at time of incident - assumes that the children are residing in the same household as the alleged abuser(s). The minimum number inserted here will be 01.

Previous Reported Abuse - includes reports made by another Children's Aid Society or by your Society. If another Society has filed a previous Report, insert applicable CAS jurisdiction number.

Previous Report(s) of Abuse by Alleged Abuser - if previous abuse concerned a child other than the one who is the subject of this Report, specify legal name of that child.

Relationship to this Child - foster parent includes an institutional and/or group home.

Action Taken on Behalf of the Child

CAS

In care - means a CAS foster home, including placement by the CAS in an institution or group home.

Other - includes a voluntary placement of the child in a substitute home.

Court Proceedings

Pending - means that a decision has not yet been made to prosecute the alleged abuser, or that charges have been laid and the matter is awaiting trial.

Reporting Society

The Report must be signed by the caseworker(s) who is responsible for the case at the date of submission of the Report to the Register.

Jurisdiction number - that number assigned to each CAS on the DATA SHEET USED FOR ABUSE STATISTICS.

20-00-170 (7/79)

Ontario Regulation 389/79
Under The Child Welfare Act, 1978

8. -(1) Every society that receives information under section 49 of the Act concerning the abuse of a child shall enquire of the Director who maintains the register established under subsection 3 of section 52 of the Act, within three days after receiving the information, to determine whether any person referred to in the information has been previously identified in the register.

(2) A report by a society to the Director under subsection 2 of section 52 of the Act of verified information concerning the abuse of a child shall be made within fourteen days after the information is verified by the society in the manner determined by the Director.

(3) Where a case concerning the abuse of a child has been reported by a society under subsection 2 of section 52 of the Act and the case has not been closed by a society, a further report made under subsection 3 of section 27 of Ontario Regulation 388/79 by the society to the Director who maintains the register established under subsection 3 of section 52 of the Act shall be made within four months after the making of the original report made under subsection 2 of section 52 of the Act and subsequent reports of the case to the Director shall be made on each anniversary of the original report until the case is closed by the Society.

(4) A case concerning the abuse of a child reported to the register by a society under subsection 2 of section 52 of the Act shall not be closed by the society until the treatment or prevention of the abuse is no longer the primary objective of the society's involvement with the family or because the case has been referred to another society or child protection agency recognized by a jurisdiction outside of Ontario. O. Reg. 389/79, s.8.

SCHEDULE 2-Q

INVOLVEMENT OF POLICE OR CROWN ATTORNEY

Extract from Guidelines for Practice and Procedure in Handling Cases of Child Abuse (O.A.C.A.S.)

Although local situations vary, it is usual that the police or the Crown Attorney are notified in the following circumstances:

1. Where a child has died.
2. Where serious injury has occurred, e.g. loss of limb or organ or damage to the head. In general, this would include those serious injuries at the extreme end of the physical abuse continuum.
3. Cases of sexual abuse.
4. Where injuries are perpetrated by non-family members, e.g. babysitters, casual boyfriends, etc.
5. Where abuse is non-specific, i.e. where the whole family, including all the children and the spouse are at risk and protection is required.
6. Where child abuse is repetitious.
7. Where the worker may require police protection. (Sec.41).C.W.A.

It should be remembered that when the Crown Attorney or the police are involved, charges may be laid by them, and the social worker may be called upon to give evidence. As in other instances, this evidence should be factual rather than opinion, and for that reason, notes should be taken which can be used in court.

When a situation is referred to the police, the CAS continues to remain active and to use this referral in the way that court is often used - that is to focus the problem and to highlight for the parent the severity of the situation. Such involvement by authority should make it clear to parents that society in general will not tolerate their behaviour. The CAS's continued involvement should be supportive to the parents and should indicate to them the readiness of the society to help them to meet their responsibilities.

SCHEDULE 2-R

REPORT ON PERSONS ALLEGEDLY CAUSING PHYSICAL ILL TREATMENT OF A CHILD

Form (1975)

TO:
DIRECTOR,
CHILD WELFARE BRANCH

FROM: THE CHILDREN'S AID SOCIETY OF:

I. IDENTIFICATION:

A. ALLEGED OFFENDER

NAME:

ADDRESS:

PHONE

RELATIONSHIP TO CHILD

OTHER IDENTIFYING INFORMATION OR EVIDENCE

OF PREVIOUS OFFENCES

B. CHILD

NAME: BIRTHDATE/ AGE

ADDRESS:

HAS THE C.A.S. BEEN INVOLVED WITH THIS CHILD OR FAMILY BEFORE __Yes __No

IF YES, IS THIS AN ADOPTED CHILD __Yes __No

IF YES, WHERE WAS ADOPTION COMPLETED:

__ THIS SOCIETY
__ ANOTHER ONTARIO >
C.A.S. >specify
__ ANOTHER PROVINCE>below
__ OTHER >

II. INCIDENT

DATE PLACE

SOURCE OF COMPLAINT

NATURE OF ALLEGED ILL TREATMENT

III. IMMEDIATE ACTION

WERE THE POLICE INVOLVED:
x YES __ NO
IF YES, WERE THEY NOTIFIED BY:
x COMPLAINT __ C.A.S.
__ CROWN ATTORNEY
x OTHER (SOCIETY)
Sarnia General Hospital

WERE CHARGES LAID:
x YES __ NO
IF YES, BY WHOM
Sarnia City Police Dept.
DATE: Pending
RESULT ____________

WAS CHILD: x MADE A NON-WARD __ MADE A SOCIETY WARD
__ KEPT UNDER SOCIETY SUPERVISION
__ LEFT WITH PARENTS WITH NO SOCIETY SUPERVISION

WERE ANY OTHER CHILDREN IN THE FAMILY TAKEN INTO CARE: __ YES x NO

OTHER ACTION TAKEN Application for Wardship for the other child Karie, born July 1976 made August 18, 1976, adjourned to Sept. 20/76.

IV. SUBSEQUENT ACTION

DISPOSITION OF CHARGES, IF ANY __ DROPPED __ DISMISSED
__ WITHDRAWN __ SENTENCED ____________
IS THIS CASE STILL ACTIVE WITH THE SOCIETY x YES __ NO
IF NO, WHEN WAS IT CLOSED ____________

SUBSEQUENT SOCIETY ACTION Parents have been charged with manslaughter.

COMMENTS: ____________

PLEASE NOTIFY THE BRANCH OF ANY CHANGE IN THE STATUS OF THIS CASE, ESPECIALLY CHARGES, IF ADDITIONAL SPACE IS REQUIRED, USE THE REVERSE SIDE OF THIS FORM.

"Sept. 27/76"
DATE OF REPORT

"William J. att"
LOCAL DIRECTOR

SCHEDULE 2-S

REPORT ON PERSONS ALLEGEDLY CAUSING PHYSICAL ILL TREATMENT OF A CHILD

August 30, 1975

TO: MISS BETTY C. GRAHAM,
DIRECTOR,
CHILD WELFARE BRANCH

FROM: THE CHILDREN'S AID SOCIETY
OF: the City of Sarnia
and County of Lambton

I. IDENTIFICATION:

A. ALLEGED OFFENDER
Mr. &/or Mrs. Popen

NAME:
Annals Ambrose & Jennifer Angelle(sic)

ADDRESS:
287 Devine Street, Sarnia
County of Lambton

PHONE
519-336-4487

RELATIONSHIP TO CHILD
Natural Parents

OTHER IDENTIFYING INFORMATION OR EVIDENCE

OF PREVIOUS OFFENCES
Previous similar complaint June/75

B. CHILD
Kim Anne Marie

NAME:
Popen

BIRTHDATE/ AGE
Jan.11/75

ADDRESS:

HAS THE C.A.S. BEEN INVOLVED WITH THIS CHILD OR FAMILY BEFORE _x_Yes __No

IF YES, IS THIS AN ADOPTED CHILD __Yes __No

IF YES, WHERE WAS ADOPTION COMPLETED:
__ THIS SOCIETY
__ ANOTHER ONTARIO C.A.S. >specify
__ ANOTHER PROVINCE>below
__ OTHER

II. INCIDENT

DATE
Aug. 30/75

PLACE
287 Devine St. Sarnia

SOURCE OF COMPLAINT
St. Joseph's Hospital
(Children's Ward)

NATURE OF ALLEGED ILL TREATMENT
Admitted for the third time, with fracture and bruises, August 31st 1975. Dr's suspect possible battered child syndrome. The skin examination revealed slight swelling and bruising of the left and right elbow region and slight bruises on the lower end of the tibia and femur on both sides of the ankle. There is a slight bruise over the left cheek and the left upper lip is slightly cracked and bleeding. The measurements of the bruises on the left and right elbow are about three to four cms. by six cms. and the bruises over the lower part of the tibia and fibula on both sides were all around the ankle.

III. IMMEDIATE ACTION

WERE THE POLICE INVOLVED:
__ YES __ NO
IF YES, WERE THEY NOTIFIED BY:
__ COMPLAINT __ C.A.S.
__ CROWN ATTORNEY
__ OTHER (SOCIETY)
____

WERE CHARGES LAID:
__ YES __ NO
IF YES, BY WHOM
____
DATE: Pending
RESULT ____________________
____

WAS CHILD: __ MADE A NON-WARD __ MADE A SOCIETY WARD
__ KEPT UNDER SOCIETY SUPERVISION
__ LEFT WITH PARENTS WITH NO SOCIETY SUPERVISION

WERE ANY OTHER CHILDREN IN THE FAMILY TAKEN INTO CARE: __ YES __ NO

OTHER ACTION TAKEN ____________________
____
____

IV. SUBSEQUENT ACTION

DISPOSITION OF CHARGES, IF ANY __ DROPPED __ DISMISSED
__ WITHDRAWN __ SENTENCED ____________________

IS THIS CASE STILL ACTIVE WITH THE SOCIETY __ YES __ NO
IF NO, WHEN WAS IT CLOSED ____________________

SUBSEQUENT SOCIETY ACTION ____________________
____

COMMENTS: ____________________
____
____

PLEASE NOTIFY THE BRANCH OF ANY CHANGE IN THE STATUS OF THIS CASE, ESPECIALLY CHARGES, IF ADDITIONAL SPACE IS REQUIRED, USE THE REVERSE SIDE OF THIS FORM.

____
DATE OF REPORT

____
LOCAL DIRECTOR

SCHEDULE 2-T

COMMUNICATION

CHILD WELFARE BRANCH, MINISTRY OF COMMUNITY AND SOCIAL SERVICES
DATED: April 14, 1976

TO THE CHILDREN'S AID SOCIETY OF
SARNIA, Ontario

FROM Mrs. R. Powell,
for Director,
Child Welfare Branch,
Parliament Buildings
Toronto, Ontario

NAME OF CHILD
Kim Anne Marie Popen

BIRTH DATE

NAME OF APPLICANT/ADOPTIVE PARENTS
Mr. and Mrs. Annals Ambrose Popen

YOUR FILE NO.

ADDRESS

OUR FILE NO.
75-5196

PLEASE CHECK APPROPRIATE BOX

__ We would appreciate a report on the current status of this case. --------

. . .

REPLY (where applicable) DATE

P.S. This is with reference to your Report on Persons Allegedly Causing Physical Ill Treatment of a Child dated September 8, 1975.

Re your file No. 75-5196 - Mr. and Mrs. Annals Ambrose Popen. At Ontario Provincial Family Court on February 25th 1976, an order of six months Society Wardship was given to C.A.S. The long delay of Court Hearing was due to the manoevering on the part of the legal representatives. Mr. Popen had pleaded guilty to the charge of neglecting to protect the child and a psychiatric examination was ordered by the Judge; however, the police and C.A.S. still suspect that Mrs. Popen had been a part of such alleged ill treatment of the child and will keep watching this ongoing situation closely. Due to the positive results of psychiatric assessment, which indicated Mr. Popen was not in need of psychiatric treatment, his diligent involvement with A.A. and the parents' intention to enroll in the Parent Effectiveness Training Course, Mr. Popen was put on probation on March 29th 1976, and sentence was suspended for one year.

III. IMMEDIATE ACTION

WERE THE POLICE INVOLVED:
x YES __ NO
IF YES, WERE THEY NOTIFIED BY:
x COMPLAINT __ C.A.S.
__ CROWN ATTORNEY
__ OTHER (SOCIETY)
St. Joseph's Hosp. Sarnia.

WERE CHARGES LAID:
x YES __ NO
IF YES, BY WHOM
Sarnia City Police Dept.
DATE: Pending
RESULT ____________

WAS CHILD: x MADE A NON-WARD __ MADE A SOCIETY WARD
__ KEPT UNDER SOCIETY SUPERVISION
__ LEFT WITH PARENTS WITH NO SOCIETY SUPERVISION

WERE ANY OTHER CHILDREN IN THE FAMILY TAKEN INTO CARE: __ YES x NO

OTHER ACTION TAKEN Application for Society Wardship made September 8th 1975 - adjourned to October 29th 1975.

IV. SUBSEQUENT ACTION

DISPOSITION OF CHARGES, IF ANY __ DROPPED __ DISMISSED
__ WITHDRAWN __ SENTENCED ____________
IS THIS CASE STILL ACTIVE WITH THE SOCIETY x YES __ NO
IF NO, WHEN WAS IT CLOSED ____________

SUBSEQUENT SOCIETY ACTION Dependent on Police Investigation and parental co-operation.

COMMENTS: ____________

PLEASE NOTIFY THE BRANCH OF ANY CHANGE IN THE STATUS OF THIS CASE, ESPECIALLY CHARGES, IF ADDITIONAL SPACE IS REQUIRED, USE THE REVERSE SIDE OF THIS FORM.

Sept. 8th, 1975.
DATE OF REPORT

"William J. Lovatt"
LOCAL DIRECTOR

SCHEDULE 2-U

REPORT ON PERSONS ALLEGEDLY CAUSING PHYSICAL ILL TREATMENT OF A CHILD

August 11, 1976

TO: MISS BETTY C. GRAHAM,
DIRECTOR,
CHILD WELFARE BRANCH

FROM: THE CHILDREN'S AID SOCIETY
OF: the City of Sarnia
and County of Lambton

I. IDENTIFICATION:

A. ALLEGED OFFENDER
Mr. &/or Mrs. Popen

NAME:
Annals Ambrose & Jennifer Angelle(sic)

ADDRESS:
287 Devine Street, Sarnia
County of Lambton

PHONE
519-336-4487

RELATIONSHIP TO CHILD
Natural Parents

OTHER IDENTIFYING INFORMATION OR EVIDENCE
Previous history of child abuse, Mr. Popen
OF PREVIOUS OFFENCES
Father pleaded guilty in court on Mar.29/76.

B. CHILD
Kim Anne Marie

NAME:
Popen

BIRTHDATE/AGE
Jan.11/75

ADDRESS:

HAS THE C.A.S. BEEN INVOLVED WITH THIS CHILD OR FAMILY BEFORE _x_Yes __No

IF YES, IS THIS AN ADOPTED CHILD __Yes _x_No

IF YES, WHERE WAS ADOPTION COMPLETED:
__ THIS SOCIETY >
__ ANOTHER ONTARIO C.A.S. >specify
__ ANOTHER PROVINCE >below
__ OTHER >

II. INCIDENT

DATE	PLACE	SOURCE OF COMPLAINT
Aug. 11/76	220 S. Mitton St. Sarnia	Sarnia General Hospital

NATURE OF ALLEGED ILL TREATMENT
Child died shortly after arriving at the hospital, Doctors again suspected possible battered child syndrome. The police have conducted a full investigation into the situation.

Mrs. Popen is pregnant once again and this second child is due in July 1976. Present goals of this case as follows:

1) Working toward returning the child, Kim, back home to live before the other baby is due.
2) Giving weekly supervision in their home.
3) Assisting their following through with the P.E.T. Course and Mr. Popen's A.A. involvement.

"Entered in Child Abuse Registry 75/76"

SIGNATURE "William J. Lovatt"

SCHEDULE 2-V

Interim Report to the Board of Directors
Children's Aid Society
of the City of Sarnia & County of Lambton

prepared by Harry Zwerver,
dated April 11, 1978

Introduction

Since arriving at the Children's Aid Society of Sarnia and Lambton County four weeks ago I have been impressed by the continuous co-operation and support which I have received from both the Staff and the Local Director.

In spite of many staff being under a great deal of pressure due to the demands of their workloads and the natural apprehensions and suspicion which have come with the events of the past several months, they have been most frank and honest in dealing with me.

There is an obvious desire on the part of this agency's staff to deal with the problems which have been, or may be, identified and to move ahead.

The prolonging of the time period before the Judicial Inquiry commences is having negative effects on several staff and even the announcement of a time frame would begin to resolve some of their anxiety.

During my initial period of time at CAS I have focussed primarily on the front line service provided by the Society, mostly through the Family Services Department. I have met with total staff in several staff meetings, have met with every staff member individually at least once, although with some fairly briefly at this stage and have attended the Family Services and Children's Services unit staff meetings, the Management group meetings, met with the Group Home parents, attended the Joint Staff Association/Personnel Committee meeting and have met with representatives of a number of community agencies.

I have not yet had much of an opportunity to examine the administrative functions of the

Society except where they are reflected in service delivery; this I will begin to do this week as well as beginning to examine the Society's budgetary process and the statistical information system.

This then is a very preliminary and incomplete presentation in which I will briefly note some of my observations then, for your consideration, note actions already taken and/or my recommendations for future action.

I will divide my report into three parts - Services, Administration and Board.

A. Services

1. General Observations

Generally, there appears to be a very basic lack of knowledge about the Child Welfare Act and its Regulations. The violations of the requirements of the Act regarding child protection services, including the use and requirements of Court are very serious. This is compounded by the almost total lack of written policies and procedures.

Recommendations

1.1 Initiate a basic training, or in some cases, retraining program for all agency social work and support staff.

1.2 Develop written policy and procedure manuals for the Family Services Department and expand those in the area of services to children in care.

2. Criteria for Service

With current budgetary pressures placed upon Children's Aid Societies service criteria tend to be determined by the workload pressures at intake. Community agencies and CAS staff themselves are not clear about this agency's service criteria - what cases will be opened for service and which will not be and why not.

Recommendations

2.1 It is important for the Society to be clear about its criteria for the provision of service, so that staff in providing or refusing service or referring cases elsewhere feel that they are still carrying out their mandate under the Child Welfare Act, as well as being supported in their decisions by the Board and administrator.

3. The Investigation of Reports of Child Abuse or Neglect

Every person having information about the abandonment, desertion, physical ill-treatment or need for protection of a child must report this information to a Children's Aid Society. (Section 41(1) The Child Welfare Act). The Act also requires that Children's Aid Societies record and investigate these complaints promptly so that a determination as to whether a child is in need of protection can be made.

In more recent directives from the Child Welfare Branch it has been made clear that the investigation of complaints of physical ill-treatment cannot be delegated to another organization or individual, and that the treatment plan for cases of suspected or confirmed child abuse must be co-ordinated by a worker from the CAS.

There have been cases noted in this Society where neglect and abuse have been reported or alleged and which were not investigated by CAS, or appear to have gone uninvestigated for long periods of time.

Recommendations

3.1 All reports of alleged child abuse must be investigated immediately. Where another agency is involved or makes the referral they may be asked to be involved with the Society; but in no case will they be delegated the responsibility for the actual investigation.

3.2 Where injuries exist, a child is to be medically examined immediately and it is the CAS worker's responsibility to see that this occurs.

3.3 In situations of obvious injury to a child and in all cases of alleged sexual abuse the police must be notified in case they wish to lay charges under the Criminal Code.

3.4 Under no circumstances should a child who appears to have been abused be admitted into care on a Non-Ward Agreement. If admission is warranted if should be by means of an apprehension and the case brought before the Court within five days.

3.5 No child admitted due to actual or suspected child abuse should be discharged from care without a proper case planning conference.

3.6 A more fully detailed child abuse procedure including involvement with hospitals, doctors, police and other community contacts be drafted immediately. (Models are already available.)

4. Emergency After Hours and Week-end Service

The Society is responsible for the provision of basic protective services twenty four hours a day, seven days a week. The specific responsibilities of the Society are clearly spelled out in The Child Welfare Act.

Presently, the switchboard at the agency is open from 9.00 a.m. until 5.00 p.m., Monday through Friday. Outside those times callers to the agency's telephone number will not have their calls answered.

In emergencies individual foster parents or clients may be able to call workers at home. A complainant or a community person in need of advise or information is not redirected. There is no after hours telephone number listed in the telephone directory.

If someone is desperate enough to call the Police they may be directed to the Children's Aid

Society duty worker on call for that particular day or week. It is not clear whether collateral agencies generally are aware that the police will channel their emergency calls.

The various police departments however, are left to the job of screening calls when they do come to them, and sometimes are not clear about which worker is on call especially as the worker duty roster gets changed between workers.

In a survey completed by the Local Director for the Ministry of Community & Social Services in January of this year, he estimated that the number of calls actually referred to workers averaged out to less than one per week night and three per week-end for an average of five per week.

The Society's contract for after hours' staff coverage is exceedingly generous given present volumes.

Recommendations

4.1 The Society should provide a more appropriate after hours service. Options should include a call forwarding system, the use of a Telephone Answering Service where calls are screened or directed, or at a minimum a recording which refers emergency calls to the police, with an appropriate notice in the telephone directory.

5. Case Opening and Case Recording Procedures

From our preliminary observations it appears that there are no clear criteria for statistically opening a case for service. Family Service cases are often not recorded within the time frame required by The Child Welfare Act.

There is no systematic bring-forward system which assists the workers in completing their recording within the time periods required by the Act. Recording tends to be "process" recording rather than goal-oriented recording and diagnostic descriptions tend not to be available.

Recommendations

5.1 Set up a statistical system which can be triggered by the department secretaries. In this way much of the worker activity presently not counted will become statistically identifiable.

5.2 Establish a goal oriented case management system which will reflect good social worker practice within the time requirements established by The Child Welfare Act.

6. Case Planning Conferences

At present time there are no structured case planning conferences or sessions except for the discussion held within the individual service units.

Recommendations

6.1 A system of structured case planning conferences or meetings of appropriate Society staff and collateral persons should be established to ensure proper case planning. This should be tied in to a goal oriented case recording format discussed in the previous section of this report.

These sessions which should be formalized as part of the administrative process in the Society should include at least the following functions:-

1. Pre-Admission
2. Pre-Placement
3. Admission Review
4. Child Planning
5. Case Planning
6. Replacement
7. Court Planning

Some of these could possibly be combined due to the size of the agency. The appropriate staff from both departments including Supervisors and in some cases the Local Director should be involved.

(We have already instituted Court Planning conferences)

7. Responsibility for Children in the Care of the Society

At present, except for the children under five years of age, there is no consistent practice as to which children are carried by the Family Services worker and which are carried by the Children's Services worker.

Due to the apparent pressures on the Family Services staff concern has been expressed by foster parents, some Family Service staff themselves and foster care workers that children in foster care are not being seen frequently enough and that foster parents are not receiving the support necessary to care for often very difficult children. This has, it is reported, led to several foster homes closing in the recent past.

The present system for the supervision of children in care has led to serious inter-departmental problems - a serious division in the Society with each group having difficulty understanding the roles and responsibilities of the other.

Recommendations

7.1 That a serious examination of the present two departments structure be undertaken.

8. Wards in their Own Homes

As a general rule, Society Wards and Crown Wards are maintained and supervised by the Society in its own resources or in resources paid for by the Society, or through another Ministry residence or facility.

Occasionally a ward will be sent home by the Courts on a trial basis or will have visits home as part of a planned return by the Society.

A ward continues to be the legal responsibility of the Society until wardship is terminated, thus a return home is a very serious matter and must be considered very carefully and then visits adequately supervised.

There have been incidents where a Society Ward or a Crown Ward have been living in their own home, sometimes with the knowledge and permission of the Society, and sometimes not.

Recommendations

8.1 Clear policies must be established regarding the return home of wards; the Court should be informed of all such plans and their approval sought beforehand. Where a child leaves our care against our wishes the Court must be informed immediately.

9. Medical Examinations of Children in Care

The Child Welfare Act requires that every child admitted into the care of a Children's Aid Society be medically examined as quickly as possible after admission - (Regulatin 16(1)). Except for the under five year olds there is presently no policy or general practice in this regard.

It appears that many children are not medically examined at all except when it appears to the worker or foster parent that this is necessary.

This practice leaves the Society in a very vulnerable position.

Recommendations

9.1 All children should be examined medically upon admission and immediately prior to discharge.

9.2 A contract should be made with one paediatrician or family practitioner to do these for the Society. If this is not possible, a division by age of child could be made to allow this to be done by more than one medical practitioner.

If all else fails we should see if the outpatient department of local hospitals could take on this responsibility.

9.3 Proper medical files should be maintained on every child in care. These should be reviewed and updated as medical events occur. This would also provide the basis for the annual medical and dental examinations required under The Child Welfare Act.

10. Parental Visiting

Presently there is no clear policy or pattern for children in care visiting with their parents.

In some cases parents have not seen their children for long periods of time regardless of the legal status of these children.

In several recent Court cases this issue has been raised by the Family Court Judge as a concern, to the point where he has threatened to make access orders a part of his finding in order to ensure that a proper visiting pattern does take place.

The reasons for infrequent visits given by the Society include the distance of foster homes from the City, pressure of workers' time and the non-availability of volunteer drivers.

Recommendations

10.1 Clear visiting policies must be established by the Society to ensure that the natural rights of both parents and children are maintained. Especially when the ultimate plan is to reunite parents and their children ongoing contact is critical. The policy must recognize the needs of each type of situation, age of children involved and the legal status of the children in care.

10.2 An examination of the differential mileage rates between staff and volunteer drivers should be undertaken to ensure that volunteers are adequately reimbursed for their transportation costs. This may lead to more volunteer drivers being available. If this does not produce results, 10.3 Examine the possibility of a "paid driver" who would be paid a retainer and mileage to transport children and clients as necessary.

Board

There have been frequent references made to the function of the Board in the past several weeks. Some of these relate to the Board-Management-Staff communications, others to the actual operation of the Society itself.

I would like to make several brief comments and recommendations.

1. Executive Committee

To ensure the efficient operation of the Board of Directors the Child Welfare Act provides for the establishment of an Executive Committee, the composition of which is prescribed in the Act. The Executive Committee provides for continuity between Board meetings and deals with items in detail not usually possible in meetings of the total Board.

It is also an important support vehicle for the Local Director and senior staff in the ongoing operation of the Society's functions.

Recommendation

I would recommend that a functioning Executive Committee be established by the Board of Directors in order to facilitate the Society's work.

2. Services Committee

As outlined in the Handbook for Board Members published by the Ontario Association of Children's Aid Societies, a Services Committee is an essential part of a Children's Aid Society's operation if the Board is to be kept informed of the service demands and complexities of the Society, and to assist the Board and senior staff in all matters related to the service problems of the Society.

Recommendation

That an active Services Committee be established, in order to assist the Board, its Executive and senior staff in examining the service policies of the Society and their implications.

3. Administration

1. Security

All agency files and records, both ongoing and closed, are stored in a Vault on the main floor of the agency's building. The Vault also includes a bulletin board for staff notices and the workers' message centre.

All agency staff have the combination to the Vault. The Vault is left open all day and there is unrestricted access to the Vault and thus to its contents.

Every staff member also has keys to the front door of the building.

I believe that this open access to files and documents without any monitoring violates the principles of confidentiality and privacy, and is not good practice.

Recommendation

That the matter of file storage and Vault access be examined in order to develop a more appropriate policy than presently exists.

This might possibly mean some structural changes or some additional locked storage cabinets located elsewhere in the building.

Harry Zwerver.

April 11th, 1978.
HZ/dwm

SCHEDULE 2-W

Summary of Popen case by William Lovatt in Minutes of Meeting, Board of Directors, Children's Aid Society, Sarnia December 15, 1977

A special meeting of the Board of Directors of the Children's Aid Society of the City of Sarnia and County of Lambton was convened at the request of the President, Mr. Dave Allen, to discuss the Popen case. The meeting was held in the Board Room of the Children's Aid Society building, 740 N. Christina Street, Sarnia, Ontario, on Thursday, December 15, 1977 at 7:30 p.m.

Present: Mr. Dave Allen, Mr. John McPhedran, Mr. Tim Lester, Mr. R. Doyle, Mrs. Val Adamson, Mr. H. Douglas, Mr. R. Large, Mr. R. Provencher, Mr. Al Bromwish, Mrs. M. Wood, Ald. M. Brown, Mr. T. Dzialowski, Mrs. A. Schertzer, Warden T. Steadman, Mr. K. Conroy, Mr. M. Armstrong.

Regrets: Mr. G. Shafley, Mr. W. Higgins, Mrs. P. Lichty, Mrs. S. Milway, Mrs. A. Notte.

C.A.S. Staff Members in attendance included Mr. R. Kissling, Mrs. Stella Tamminen, Miss J. Payne, Mrs. Mabel Harvey, Mrs. Kathy Mitchell, Mr. Harold Carter, Mrs. E. McMillin, Mrs. A. Dick, Mrs. E. Van Der Jagt, Mrs. Beth Murray, Mrs. Valerie Jenken, Mrs. Dorothy Myers.

The President, Mrs.(sic) Allen, opened the meeting on the subject of the Kim Popen case and asked Mr. Lovatt, the Local Director, to review the salient points of the case history as presented in a written summary form to every Board Member who was present.

Mr. Lovatt stressed the following points in a summary of the Popen case to clarify a number of items.

1. June 1975, there was insufficient evidence to warrant intervention on the Society's

first contact with the Popens. The referral was anonymous and the mother had a plausible reason for the very faint and old marks on the child, Kim Popen. The parents denied any abuse and refused the services of the Children's Aid society and Lambton Health Unit. The Police accepted a watching brief.

2. On Aug. 31, 1975, a call to St. Joseph's Hospital made the C.A.S. aware of previous injuries to the child and therefore the child came into care.

3. Sept. 8, 1975 to February 25, 1976, there were a series of court adjournments during which time the C.A.S. were cautioned not to talk with the child's parents on the grounds that such contact was prejudicial to the defence's case.

4. Mr. Popen accepted full responsibility for the injury received in August, 1975 by Kim Popen since he was drunk at the time, and the mother, Mrs. Popen, was absolved from any guilt. No conviction was registered against Mrs. Popen.

5. Since August, 1975 considerable evidence had accumulated on Mr. Popen's behaviour. He had ceased to drink and also attended Alcoholics Anonymous.

6. On instructions from the Court, Mr. Popen was examined by a psychiatrist. The forthcoming reports were positive and concluded as follows "In summary then, if Mr. Popen stays totally away from alcohol and attends whatever courses Mrs. Harvey or the Public Health Nurse might set up, and Parents Anonymous, if a branch of this were available locally, it would surely minimize the danger of the child being battered in the future."

7. Lambton Health Unit nurse and probation office have confirmed that nothing was observed which led them to suspect abuse. The probation officer visited on August 11,

1976 and saw only a sore lip. Mrs. Popen informed that she had seen the Doctor for this on the previous Friday.

8. At the time when the decision was made to return Kim home on May 27, 1976, we had the following information on file:

   a. Parents wanted Kim back and their lawyer would fight for the child's return.

   b. Both parents had attended the P.E.T. course and the supervisor of the course had commented favourably on their participation.

   c. The parents had cooperated in every way with C.A.S. and the Probation Officer.

   d. Mr. Popen had stopped drinking and attended Alcoholics Anonymous.

   e. Kim would be returned to her parents at the Aug. 4, 1976 Court Hearing because of lack of evidence to refute this action from taking place.

   f. C.A.S. could have returned the child before the new baby was born and reintegrate the family by the time of the child's birth with the willing cooperation of both parents or could hold off until August 4, 1976 Court hearing which would have terminated the wardship.

   g. The C.A.S. made the decision to return the child to its natural parents based on all the best evidence available at the time, That decision proved to have unfortunate consequences.

Mr. Lovatt, the Local Director, made recommendations to the Board of the Children's Aid to assist in preventing any recurrence of the Popen tragedy. They were as follows:

a. That a formal reporting system in cases of child abuse be established between the C.A.S., Lambton Health Unit, and the Probation Services.

b. In cases of child abuse, the children can no longer be returned to parents without Court involvement.

c. That we require Medical examination and report every two weeks where C.A.S. has supervision of "at risk" child. Failure to do so should compel a return to Court.

A discussion then ensued on the typewritten review of the entire Kim Popen file provided to all Board members. Mr. Lovatt and Mrs. Harvey answered questions raised by Board and C.A.S. staff members on discrepancies between the newspaper reports on the Popen case and the written summation of the C.A.S. file.

A suggestion for board consideration was then introduced by the President, Mr. Dave Allen, on the establishment of an impartial board of inquiry composed of three professional social workers selected by the executive committee of the O.A.C.A.S. Their job would be a throrough(sic) examination of all facts pertaining to the Popen case. The impartial inquiry of three social workers would then be asked to render an opinion on corrective measures that will help the Agency to prevent the recurrence of any such tragedy in the future.

The formal motion of adoption was moved by Ald. M. Brown and seconded by Mr. R. Provencher that

> "a three person board be selected by O.A.C.A.S. executive committee to review the case in question and attempt to complete such a study within one month that will bring forth any recommendations they wish to make for future operations of this Children's Aid Society."

After a brief discussion on its terms of reference in reporting to the Board of this Society and the financing of this impartial enquiry the motion received the unanimous consent of the Board members present.

Mr. Allen then asked for and received a motion to adjourn the special meeting.

Respectfully submitted

John McPhedran
Pro Tem Secretary

SCHEDULE 2-X

Report for Child Welfare Branch
Ministry of Community and Social Services
Prepared by the Children's Aid Society, Sarnia
December 8, 1977

POPEN, Annals Ambrose, known as "Karie" aged 38 years.

POPEN, Angela(sic) Jennifer, aged 18 years.

CHILDREN: Kim Anne Marie born January 11, 1975
Karie Junior born July 6, 1976.

FAMILY BACKGROUND

The parents were both born in Jamaica. Mr. Popen had been in Canada, with his family for some years. Mrs. Popen came to Canada in 1973 following her marriage. We were told in 1975 that she was nineteen. It is now apparent that she is only now 18, which would mean that she was married at 14 years of age, and a mother at 15 or 16. Further information regarding the mother's background will be given below.

REFERRAL JUNE 1/75

Detective Gander, Sarnia Police Department, came to the office requesting the worker's assistance in investigating an anonymous call made to the police the night before. There was a question of possible abuse to the child Kim.

A worker, Mrs. Sandy Saul, and a volunteer Mrs. Win Hoad, R.N., accompanied the officer. They located the child at the home of an aunt, Mrs. Cecil Popen, as the parents were in the process of moving from one home to another and she was caring temporarily for the child. She pointed out marks on the child which were stated to be about two weeks old and were very faint, and would not have been noticed if she had not pointed them out. The child had a cut on her tongue and lip which were said by the aunt to be caused by the mother forcing the child to eat. While the worker was present, the mother appeared, grabbed the child and attempted to leave but was stopped by the officer. Mr. Popen came in during this time. The mother's handling of the child was noted as the child appeared upset as she prepared to feed her. Services of Children's Aid Society and the Lambton Health Unit nurse were refused by the parents. The mother was defensive and hostile, the father quiet and meek. Both declared the child received good care and denied any possibility of abuse.

The case was not assigned but a follow up call was made to the City Police who suggested that we wait to make a home visit. They would report back to us if necessary.

AUGUST 31/75
REFERRAL

Constable Wyville, City Police, called requesting a worker to come to St. Joseph's Hospital where the child Kim was presently admitted. Mrs. A. Dick immediately went to the hospital. Abuse was strongly suspected by staff doctors and police. The mother was there trying to have the child released. Mr. Popen had been sent for by her to verify her story that eight month old Kim had pulled herself up out of the crib, onto the dresser where she fell and was found by the mother on the floor.

Mr. Popen repeatedly declared that no one is taking his child away from him and that he did not mistreat her. He finally realized his wife had come to the hospital to get the child against what he'd told her. At this time it was learned that the child had a (broken, chipped) bone in the elbow. The parents reluctantly agreed to non-ward care while treatment of the child was provided and poilice(sic) investigations were in progress. See medical reports attached.

It was also learned that there was a previous seemingly unclarified situation regarding this child. At two months of age, the child was in hospital for a fractured, upper arm and the explanation given at that time was that "the child fell out of the walker" with the sitter being blamed for the abuse, and the sitter now having returned to Jamaica. It was later learned also, that the child Kim, had been observed (with a black eye) at a shopping centre and a report had been made to the family doctor, Dr. Jumean. The mother no longer wished to have Dr. Jumean involved. The mother said that Kim has climbed out of the crib and fallen, and that Kim can sit, crawl and pull herself up over and out of the crib at the present time.

It was also learned that Mrs. Popen had taken Kim to the Sarnia General Hospital where she saw Dr. Haig. According to her, he requested her to come back the next day for x-rays. Instead of waiting, she had taken the child to St. Joseph's Hospital where the child had been admitted at 1:30 a.m. on August 31.

The case was open to H.R. Carter.

SEPT. 5/75
CHILD INTO
CARE

Kim was taken into care and placed in a foster home. Worker assigned was Mrs. M. Kirby. *See report on child care attached.

*Not included in Exhibit filed.

COURT ACTION

Initial court hearing was set for September 8. There were adjournments in this case to October 29, 1975, then again to January 19, 1976 and February 25, 1976 in Family Court.

Criminal charges were laid by the Police under the Child Welfare Act and these hearings were held in Family Court on October 30, 1975, adjourned to November 13, 1975 and adjourned to January 19, 1976 and to February 23, 1976. There was difficulty in getting an agreement about the hearing of the two cases before the Family Court with our position being that the Wardship Hearing should be separate and that of the legal representative for the family, that the two cases should be heard together. The disposition of the criminal charges were made on February 23, when Mr. Popen pleaded guilty. Sentencing regarding this was made on March 29, 1976 in order that Mr. Popen have psychiatric assessment.

On February 25, 1976 the Society received six months Society Wardship and both parents were advised to co-operate with the agency and to attend any courses on parenting that were suggested to them by C.A.S. Since the parents were requesting more visitation, it was also pointed out that future visits of Kim to them, would continue to be under the supervision of C.A.S.

FEB. 27/76 to MARCH 29/76

The case was transferred to Mrs. Lo. It was felt that a younger, female worker would have better opportunity of working with this mother who was resistent to Mr. Carter's efforts to help her.

It is to be pointed out that Mr. Carter had difficulty in talking with this family, partly because the lawyer for the family did not wish us to "quiz them" during the period of adjournment of the hearings. Permission was requested from the lawyer's office for the two home visits which were made January 6, and February 20, 1976. The observations of the worker were that Mrs. Popen lies a good deal and is also a young, inexperienced mother. Mrs. Popen did state that she had a 7 month old child who died in Jamaica. This has never been verified and there is real question as to whether this child ever existed. Mr. Popen had admitted drinking problems and little or no knowledge of child raising.

Further information as to the family background was given. Mr. Popen's large family resides in Sarnia, with there being a great deal of coming and going between the family members. Mrs. Popen, on the other hand, was rather isolated and stated that she was not liked by her husband's family or extended family.

Home visits to both the first home at 287 Devine St., later at 220 S. Mitton St. found that the apartment was clean, neat and sufficiently equipped to handle a child. The young couple in the apartment in the home at 220 S. Mitton were friends of the Popen's and Mrs. Popen had a good relationship with them.

There was question as to whether or not Mrs. Popen was pregnant until it became obvious that she was. She spoke of having blackouts on two occasions and it was found out, when this was mentioned in Mr. Popen's presence, that he was not aware of this and there was again question as to whether Mrs. Popen was lying. Support was given to Mr. Popen in having the psychiatric assessment and to become involved in A.A. and to work with the Probation Officer. Also, arrangements were being made to have the Popens enroll in the Parent Education course which was being planned.

From February 27, to July 6, the worker Mrs. Lo, visited the Popen home on a weekly basis and consulted with the supervisor following each visit. In general, she developed a good working relationship with the Popens. She observed that Mrs. Popen attempted to change her story from time to time but became increasingly open and co-operative throughout this period.

Mr. Popen was attending A.A. and was also working. Visits were made during the day when the worker could speak with Mrs. Popen alone and were also made in the evening when both parents could be present.

MARCH 29/76

Mr. Popen was in court for sentencing and again pleaded guilty to the charge of neglecting to protect his child. The psychiatric assessment was provided for the court and it indicated that Mr. Popen was not in need of psychiatric treatment. He was also involved with A.A. and with the involvement with the agency being effective, Mr. Popen was put on probation and sentence was suspended for one year. Violation of the probation would be six months to one year in jail.

DISCUSSIONS
WITH THE
PARENTS
APRIL-JULY/76

Mrs. Popen shared material with the worker about her family in Jamaica which apparently was a rather deprived background with the father having left the home and the mother having left the home for a time, with Mrs. Popen and the grandmother taking care of the children. She showed the worker a picture of a child that she said that she had and who was being raised by her grandmother.

The marital relationship improved. The parents were talking together more and they reported that her relationship with his family was also improving. The growth and development of the child was discussed at considerable length as were child training methods.

In April 1976, it was decided to arrange for Kim to start home visits. It was felt that it would take some time to re-integrate the child into the family and the series of visits were set, initially for 1 1/2 to 2 hours, with the worker being present. The parents were at first uneasy about the worker being there, then became more comfortable with it. It was felt that they had gained from the discussions of growth and development and methods of discipline.

CONFERENCE

A conference was held by the child care worker, the family service worker, and the two supervisors, in which the progress of the case was completely reviewed and all information pooled and the decision made that the child would be returned home prior to the birth of the expected child so we would have a period of observation of the parents' handling of the child prior to the birth of this second child. It was felt important that the family have a period alone with Kim before the baby was born. Kim was regressing from the regular visits and it was decided to limit the visits for a month and return the child home on May 27.

Following the child's return home, she was carefully observed by the worker who would, on many visits, have the child on her lap. Kim was usually dressed in sleeveless tops and shorts or occasionally in a short-sleeved dress. The only bruise noted during this time was on one finger. This was stated to be from Kim's putting something in an electric outlet. Following this, on the worker's advice, the parents got covers for the outlets and put them on any outlet the child could reach. The use of the ointment for the labial fold ulcers was continued as long as necessary. The worker also gave the family her home phone number in case they needed it but not calls were received.

P.E.T. COURSE
APRIL -
MAY/76

During this time, the Popens were also enrolled in the Parent Effectiveness Training course which was given at the Agency by a qualified P.E.T. teacher. They attended all but one of the sessions and discussed the sessions with the worker, apparently getting a good deal out of this. Neither parent has much education and they worked out a system whereby one would help the other in doing the necessary excercises(sic) in the course. It was reported to the agency by the leader at the end of the course, that they had been active participants and very helpful in the discussion that had taken place. They were not spelled out to the leader as abusive parents and he was indeed surprised to learn at a later date, that indeed they were.

JULY 6/76
to
AUG. 11/76

Mrs. Popen gave birth to Karie Junior Popen. Adequate plans were made for Kim's care during confinement.

Regular visits to the home were continued following the birth of the child on a twice weekly basis by the Family Service worker. The overall situation was good. Kim's behaviour was within normal limit and the Popen's were pleased with her and with themselves. They did experience the same reactions of Kim as the foster mother did, in that she would have good days and bad days, and they were able to cope with the situation. The child was also teething but the mother was able to comfort her and handle her very well.

A Lambton Health Unit nurse was involved with the family following the birth of the second child. Nothing unusual was noted and the child was in good condition when brought into the Society's care.

Towards the end of July there was discussion about continuation of wardship pro and con with the Popens. It was discussed with the Popens that we felt they were making good progress and this was reviewed with them from the point of view of their increased competence in helping the child through their greater understanding of a child's needs. Karie was doing very well and their relationship had improved considerably. Following this however, the worker noted the mother was becoming more distant and more cool and became somewhat apprehensive that we would not be able to go into the home on a voluntary basis once the wardship terminated. In conference with the supervisor, it was decided that we would request a supervisory order in order to ensure that we could continue going into the home and counselling with the family.

A court date was arranged for August 4, 1976 but it was known that it would be necessary to adjourn the case. They had been served with Notices of Hearing on July 27. The parents said they understood why we would need a supervisory order and felt it was alright with them. On August 4, the worker visited the home and informed them of the new date for the court. Kim was observed as sitting beside her mother quietly watching t.v. On

August 11, 1976 the worker was notified that the child had died and she was requested by Sarnia Police to go to the Sarnia General Hospital to identify the child.

On August 12, the worker talked with the family on a home visit and was informed that the child had fallen from the patio.

At this time, the case was being investigated by the Sarnia Police Department and it was no longer possible to talk with the family.

On August 13, the supervisor with the help of the police, took the second child, Karie, into the care of the Society. As of December 1977, the child is still in the care of the Society. The parents had been convicted of manslaughter and the Society has a date of January 12, 1978 at which they will request Crown Wardship on the child Karie Junior Popen.

The father particularly has visited with the baby at the agency during this time and the mother has also visited on occasion when she has been in the city and not at the St. Thomas Ontario Hospital. All visits have been carefully monitored.

SCHEDULE 2-Y

Contentious Issue Report
Re: Death of Child Kim Anne Marie Popen
prepared by Child Welfare Branch,
Ministry of Community and Social Services
dated December 12, 1977

Issue Title:

Death of Child
Kim,Anne, Marie Popen b. January 11, 1975.
Died; August 11, 1976.

Issue Description:

On June 17, 1975, the Children's Aid Society of the Lambton County received a complaint that Kim Popen was allegedly ill treated by her parents. The Society and the Police Department investigated but could not ascertain that the child was physically abused. However, it was observed that there was some faded marks on the child's body. At that poimt the Society decided to open the case and provide service on protection basis.

On August 31, 1975 the St. Joseph Hospital in Sarnia reported that Kim was admitted with fractures and bruises. The Doctors in the Hospital examined the child and came to the conclusion that this was a possible battered child syndrome. X-rays revealed that Kim previously had a broken arm which was healed. The Society confronted the parents and they agreed that the child needed protection. Kim was admitted into the care of the Society on August 31, 1975, and placed in a foster home where she remained until May 27, 1976. In the meantime the Police laid charges against the parents. There were several Court Hearings and adjournments, and on February 25, 1976, the Society was granted 6 months Society Wardship. At the same Court Hearing Mr. Popen was found guilty of child abuse and was put on one year's probation. The Court, also ordered that both parents take a Parent Effective Training Course and Mr. Popen would join A.A.

During this period of time the Society visited the family on a weekly basis and found them to be very co-operative and willing to attempt to improve their family relationships. Mr. Popen stopped drinking and attained steady employment. However, Mrs. Popen got pregnant again and gave birth to a baby boy in July of 1976.

At the end of May 1976, the Society agreed that Kim would be returned to her parents before the new baby was born in order to provide a period of readjustment.

After Kim was returned home the Society made regular visits and the time they saw the child was 7 days before her death and there was no evidence of neglect. Before Society Wardship for Kim was due for review the parents became somewhat withdrawn and less co-operative. Therefore, the Society was planning to ask the Court for a one-year supervision order, but the case was not brought before the Court as Kim died a few days prior to the Court Hearing.

On August 11, 1976, Kim Popen, 19 months old was brought to the Sarnia General Hospital where she died shortly after her arrival. The Police were informed and the parents were subsequently charged with manslaughter. Two days after Kim's death their second child Karie, 2 months old was taken into the care of the Society and made a Society Ward. Further, review of Society Wardship will take place in January of 1978.

Proposed Response:

Both parents have been found guilty of manslaughter and are presently in custody. They will be sentenced on December 21, 1977.

When Society Wardship for Karie, born July, 1976, is reviewed in January, 1978, the Society is planning to ask for Crown Wardship.

The Staff of the Child Welfare Branch are discussing with the Societies the present policy and procedures regarding protection of children in their own home while under supervision of the Children's Aid Society.

UPDATE - FEBRUARY 17, 1978

On December 22, 1977, Mrs. Jennifer Popen, eighteen, was sentenced to seven years to be served in a Psychiatric Hospital in St. Thomas. Mr. Annal(sic) Popen, 38, received a one year sentence to be served in jail. An appeal has been launched by Mr. Popen.

The Board of Directors of the Children's Aid Society of the County of Lambton at their meeting on December 15, 1977, passed a motion to request that a review committee of three social workers be appointed to review this case in detail. Such a committee was appointed and an investigation conducted on January 25, 26, and 27, 1978, in Sarnia.

The committee was headed by Mrs. Margaret Farina, Deputy Director of the Ontario Association of Children's Aid Societies. Other members were: Mr. Bruce Heath, Field Consultant, Child Welfare Branch of my Ministry and Mr. Arnie Petersen, Director of Resource Services for the Family and Children's Services of London and Middlesex.

SCHEDULE 2-Z

Comparison of 1977/78 budgets for Children's Aid Society, Sarnia, prepared by William Lovatt, November, 1977 and February, 1978; Ministry, January, 1978; McCabe and Zwerver, June, 1978

Exhibit #	139	140	109	110
Category of Expenditure	Lovatt Budget Nov./77 $	Ministry Letter Jan./78 $	Lovatt Budget Feb./78 $	McCabe-Zwerver Budget June/78 $
Salaries	412,000	336,486	387,000	408,975
Employee Benefits	41,200	40,378	42,000	49,077
Building Occupancy	30,000	30,000	30,000	32,500
Office Expenses	18,000	18,000	18,000	21,965
Training, Education and Conference	1,800	1,800	1,800	3,000
Promotion and Publicity	1,000	1,000	1,000	1,000
Purchased Services (non-medical)	12,000	9,540	12,000	23,070
Travel	30,000	24,518	26,000	30,000
Boarding Rate Payments	295,000	286,907	280,000	300,138
Health and Allied Services	6,000	6,000	6,000	8,500
Food Services	-	-	-	-
Clients' Personal Needs	31,000	25,173	28,000	30,014
Emergency Assistance	-	-	-	500
Miscellaneous Expenditure	3,500	3,500	3,500	3,500
Total Expenditures	881,500	724,802	835,300	912,239
Expenditure Recoveries	25,000	23,500	23,500	23,500
Net Expenditures	856,500	701,302	811,800	888,739
Allocation of Administration				
Net Program Expenditures	856,500	701,302	811,800	888,739
Income Allocation	35,000	35,000	35,000	35,000
Capital Costs	-	-		
Non-recurring Costs	-	-		
TOTAL	821,500	666,302	776,800	853,739

SCHEDULE 3-A

Involvement of Police or Crown Attorney from Guidelines for Practice and Procedure in Handling Cases of Child Abuse by O.A.C.A.S. dated July, 1976

Although local situations vary, it is usual that the police or the Crown Attorney are notified in the following circumstances:

1. Where a child has died.

2. Where serious injury has occurred, e.g. loss of limb or organ or damage to the head. In general, this would include those serious injuries at the extreme end of the physical abuse continuum.

3. Cases of sexual abuse.

4. Where injuries are perpetrated by non-family members, e.g. babysitters, casual boyfriends, etc.

5. Where abuse is non-specific, i.e. where the whole family, including all the children and the spouse are at risk and protection is required.

6. Where child abuse is repetitious.

7. Where the worker may require police protection. (Sec.41). C.W.A.

It should be remembered that when the Crown Attorney or the police are involved, charges may be laid by them, and the social worker may be called upon to give evidence. As in other instances, this evidence should be factual rather than opinion, and for that reason, notes should be taken which can be used in court.

When a situation is referred to the police, the CAS continues to remain active and to use this referral in the way that court is often used - that is to focus the problem and to highlight for the parent the severity of the situation. Such involvement by authority should make it clear to parents that society in general will not tolerate their behaviour. The CAS's continued involvement should be supportive to the parents and should indicate to them the readiness of the society to help them to meet their responsibilities.